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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 679 and 680

[Docket No. 100107012-1689-03]

RIN 0648-AY53

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod Allocations in the Gulf of Alaska; Amendment 83

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS publishes regulations to implement Amendment 83 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA). Amendment 83 allocates Western and Central GOA Pacific cod total allowable catch (TAC) limits among various gear and operational sectors. Sector allocations limit the amount of Western and Central GOA Pacific cod that each sector is authorized to harvest. This action reduces competition among sectors and supports stability in the Pacific cod fishery. This rule limits access to the Federal Pacific cod TAC fisheries prosecuted in State of Alaska waters, commonly known as the parallel fishery, adjacent to the Western and Central GOA. This action is intended to promote community participation and provide incentives for new entrants in the jig sector. It also promotes the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan, and other applicable laws.

DATES: Effective January 1, 2012.

ADDRESSES: Electronic copies of this rule, the Environmental Assessment (EA), and Regulatory Impact Review (RIR) may be obtained from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, Alaska; and by e-mail to OIRA_Submission@omb.eop.gov, or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Seanbob Kelly, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the U.S. exclusive economic zone (EEZ) of the GOA under the Fishery Management Plan for Groundfish of the GOA (FMP). The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

The Notice of Availability for Amendment 83 was published in the Federal Register on June 28, 2011 (76 FR 37763), with a 60-day comment period that ended August 29, 2011. The Secretary of Commerce (Secretary) approved Amendment 83 on September 22, 2011. The Council submitted the proposed rule to NMFS, and it was published in the Federal Register on July 26, 2011 (76 FR 44700). The 45-day comment period on the proposed rule ended September 9, 2011. NMFS received a total of 6 letters, from five unique persons, on

Amendment 83 and the proposed rule implementing the amendment. The letters contained 29 individual comments. A summary of these comments and the responses by NMFS are provided under Response to Comments below.

Elements of the Final Rule

A detailed review of the provisions of Amendment 83 and its implementing rule is provided in the preamble to the proposed rule (76 FR 44700, July 26, 2011), and is not repeated here. The proposed rule is available from the NMFS Alaska Region web site (see ADDRESSES). The following provides a list and brief review of the regulatory changes made by this final rule to the management of the GOA Pacific cod fishery. NMFS' responses to public comments on Amendment 83 and the proposed rule to implement Amendment 83 are also presented below.

Amendment 83 was adopted by the Council in December 2009 to supersede the current inshore/offshore processing allocation of Western and Central GOA Pacific cod among various harvesting sectors. Pacific Cod is second only to walleye pollock as the predominant GOA fishery. As one of the most valuable fish species in the GOA, Pacific cod is the primary species targeted by vessels using pot and hook-and-line gear and is an important species for vessels using the trawl gear. Smaller amounts of Pacific cod are taken by vessels using jig gear. Currently, Pacific cod in the GOA is apportioned on the basis of processor component (inshore and offshore) and season, as implemented under Amendment 23 to the GOA FMP (57 FR 23321, June 3, 1992). Under inshore/offshore management, 90 percent of the Western, Central, and Eastern GOA TAC is allocated to vessels catching Pacific cod for processing by the inshore component, and 10 percent to vessels catching Pacific cod for processing by the offshore

component. The Council recognized that competition among participants in the Western and Central GOA Pacific cod fisheries has intensified in recent years. Because the TACs are divided by inshore/offshore processing components of the fishery and not divided among gear or operation types, there is a derby-style race for fish and competition among the various gear types for shares of the TACs.

Amendment 83 establishes sector allocations for each gear and operation type in the Western and Central GOA Pacific cod fisheries. In both regulatory areas, the sectors are jig, hook-and-line catcher/processor (C/P), pot catcher vessel (CV) and C/P combined, trawl C/P, trawl CV, and hook-and-line CV; however, in the Central GOA, the hook-and-line CV sector are further divided by vessel length. In the Central GOA, hook-and-line CVs less than 50 ft (15.2 m) LOA (<50 ft (15.2 m) LOA) are in one sector and hook-and-line CVs greater than or equal to 50 ft (15.2 m) (≥ 50 ft (15.2 m)) are in another sector. Historically, the majority of catch by hook-and-line CVs has been harvested by vessels <50 ft (15.2 m) LOA, but in recent years, there has been a substantial increase in catch by hook-and-line CVs that are between 50 ft (15.2 m) and 60 ft (18.3 m) LOA. Dividing this sector at 50 ft (15.2 m) LOA protects smaller boats from an influx of effort by vessels ≥ 50 ft (15.2 m) LOA. The Council recognized that in the Central GOA the increased competition appears to result in safety concerns at sea, as smaller boats compete with larger vessels in a race for fish. However, by establishing a CV hook-and-line split, vessels ≥ 50 ft (15.2 m) LOA that are long-time participants in the fishery would share an allocation with these more recent entrants. A similar CV sector split was not recommended for the Western GOA because the Western GOA has not seen a similar increase in effort by CVs ≥ 50 ft (15.2 m) LOA. Moreover, the Western GOA hook-and-line CV sector has historically

harvested a small percentage of the TAC, and if the TAC was further apportioned by vessel length, this sector's allocation would not support a directed fishery.

This rule implements the combined pot CV and pot C/P sectors in the Western and Central GOA because catch by pot C/Ps has been relatively small, and if apportioned individually, Pacific cod allocations for pot C/Ps would be extremely low. NMFS' experience with similar sector allocations has shown that small allocations can be difficult to manage inseason. Moreover, most vessels that participated as pot C/Ps in the GOA Pacific cod fishery in recent years also have fishing history as pot CVs, and would contribute catch history to both the pot C/P and CV allocations.

This final rule divides the GOA Pacific cod TACs among gear and operation type, based primarily on historical dependency and catch history by each sector, while also considering the economic dependence of communities on this fishery. This action is intended to stabilize sector allocations for each gear and operation type in the Western and Central GOA Pacific cod fisheries, based primarily on historical catches, as well as conservation, catch monitoring, and social objectives, including considerations for small boat sectors and coastal communities traditionally participating in the inshore Pacific cod processing sector. NMFS and the Council recognize that participants with significant long-term investments and extensive catch histories are highly dependent on the GOA Pacific cod fisheries and need stability in the form of sector allocations.

Amendment 83 sector allocations are based on historical dependency, each sector's retained catch history of the Pacific cod resource, and on socioeconomic and community concerns. One of the fundamental issues identified in the Council's problem statement was that

competition among sectors in the fishery may contribute to higher rates of bycatch, discards, and out-of-season incidental catch of Pacific cod. The sector allocations of Pacific cod TAC are intended to institutionalize the historical pattern of utilization of this resource and facilitate the development of management measures to address Steller sea lion mitigation, bycatch reduction, and prohibited species catch (PSC) avoidance. The effects of this action on management, monitoring, and enforcement were addressed in Section 2.3.3 of the analysis for this action. The allocations to the jig sectors are intended to expand entry-level opportunities in the GOA Pacific cod fishery. In addition to expanding this fishery, this action is intended to reduce uncertainty and help stabilize the Pacific cod fishery across the sectors and promote sustainable fishing practices in the Western and Central GOA.

This final rule does not establish sector allocations in the Eastern GOA. In recent years, only a small proportion of the Eastern GOA TAC has been harvested each year, although effort and catch has increased. NMFS recognizes the possibility that having no sector allocations in the Eastern GOA would encourage increased effort in that fishery. However, the Council did not perceive a need for such an action due, in part, to the differences in the prosecution of the Pacific cod fisheries in the Eastern regulatory area, such as the extensive trawl closures effectively prohibiting trawl fishing in the Southeast Outside district of the Eastern regulatory area. As a result, the Council recommended that the Eastern GOA Pacific cod TAC not be allocated among sectors under Amendment 83.

The Council considered a broad range of historic and recent participation when selecting the allocations to sectors. Allocations were calculated by taking each sector's "best option" from four sets of years in the Western GOA and from six sets of years in the Central GOA to calculate

catch history, and then scaling allocations so that they sum to 100 percent. In the Western GOA, the four options for calculating catch history included one option consisting of all retained catch during 1995 through 2005. This period includes six years of catch history prior to implementation of the Steller sea lion protection measures in 2001. The Steller sea lion measures resulted in a shift of catch from trawl gear to pot gear. By including the earlier time period, this action accounts for the catch history of the trawl sector prior to this shift and generally favors trawl vessels. In the Central GOA, the catch histories include more recent years (2002 through 2008) and generally favor the pot CV sector, and, to a lesser extent, the hook-and-line sectors. The options in the Central GOA do not include retained catch from 1995 through 2000 because the reduction in trawl catch concurrent with implementation of the Steller sea lion protection measures in the Central GOA was less than in the Western GOA. The Council considered and rejected including the time period prior to 2000 in the Central GOA because the overall effect on sector allocations was not determined to be substantively different from the allocation resulting from years used after 2000.

Amendment 83 is intended to protect historical processing and community delivery patterns established in the GOA groundfish fisheries under the inshore/offshore management structure. The action limits the use of mobile floating processors, commonly known as motherships. In the Central GOA, no motherships have processed groundfish since 2000. In the Western GOA, there has been limited mothership activity. Amendment 83 establishes a mothership processing cap at 2 percent of the Western GOA Pacific cod TAC. Because the Central GOA has had no mothership activity since 2000, NMFS prohibits vessels from receiving deliveries of groundfish in most locations in the Central GOA. NMFS is establishing separate

processing caps for motherships operating within the marine municipal boundaries of specific GOA communities reliant on GOA fishery resources. Annually, eligible permit holders are allowed to process up to 3 percent of the respective Western and Central GOA TACs on a mothership, provided that it operates within the municipal boundaries of a Community Quota Entity (CQE) community. The action is intended to provide CQE communities additional processing opportunities and possibly economic benefits, such as tax revenues and employment, resulting from any increase in mothership processing activity.

This action limits access to the Pacific cod parallel fishery for Federal fishery participants throughout the GOA. The GOA parallel fishery occurs within State of Alaska (State) waters and is opened by the State concurrent with the Federal season to allow vessels to fish off of the Federal TAC within State waters. This rule precludes federally permitted vessels that do not have a properly endorsed license limitation program (LLP) license from participating in the Western or Central GOA Pacific cod parallel fishery. Owners of some vessels that fish for Pacific cod in the Federal waters have surrendered their FFP licenses before fishing in the parallel waters or in the non-parallel-State waters Pacific cod fishery to avoid NMFS observer, VMS, and recordkeeping and reporting requirements, only to have the permits reissued for the opening of the Federal waters fishery. Surrendering or amending an FFP may degrade the quality of information available to manage the Pacific cod fishery. This action is intended to prevent the harvest, by federally permitted vessel operators who did not hold LLP licenses, from eroding the catches of historical participants who contributed catch history to the sector allocations and depend on the GOA Pacific cod resource. Vessels fishing in Federal waters must hold an LLP license with the appropriate area, gear, and species endorsements, but vessels

fishing in parallel State waters fisheries were not required to hold an LLP license. This action is necessary to prevent vessels without LLP licenses from avoiding conservation, management, and recordkeeping measures while fishing for Pacific cod in State parallel fisheries.

GOA Pacific Cod Sideboards

Sideboards are collective catch limits that apply to all vessels in a particular sector. Vessels subject to a sideboard are allowed to fish up to the sideboard allocation but may not exceed it. Sideboards do not guarantee that a sector will harvest a specific amount of TAC. Sideboards limit participation by specific vessels in most GOA groundfish fisheries in Federal waters and in State waters during the State parallel fisheries. In general, sideboards are intended to limit the ability of vessels in rationalized fisheries from exceeding historic levels of participation in the GOA, which otherwise might exacerbate a "race for fish." Harvests in both the Federal fisheries and State parallel fisheries accrue toward an inshore or offshore sideboard limit.

NMFS implements sideboards through the harvest specification process and these are specified as amounts, in metric tons, of fish. NMFS publishes proposed and final sideboard limits in the Federal Register as part of the annual harvest specifications (See http://alaskafisheries.noaa.gov/sustainablefisheries/specs11_12 for the specific harvest specifications). Once these sideboard limits are published, NMFS reviews the number of vessels that are subject to the sideboard and compares that to the sideboard limit. If the sideboard limit is small for a fishery and the potential harvest rate of the sideboard vessels is high, NMFS may choose not to open directed fishing for a sideboard fishery. If NMFS determines that the sideboard limit would not be exceeded, a sideboard fishery may be opened. NMFS determines

whether to open a specific sideboard fishery on a case-by-case basis. The impacts of the sideboard limits recommended by the Council were analyzed as part of the Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (FEIS) and the annual Supplementary Information Report associated with the FEIS.

Non-American Fisheries Act (non-AFA) Crab Sideboards

As part of Amendment 83, the Council recommended operational and gear-specific non-AFA crab sideboards based on participation in the GOA Pacific cod fishery prior to the implementation of the crab rationalization program. The king and Tanner crab fisheries in the EEZ of the Bering Sea and Aleutian Islands (BSAI) are managed under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). Amendments 18 and 19 to the Crab FMP implemented the BSAI Crab Rationalization Program (CR Program) in a final rule published on March 2, 2005 (70 FR 10174). Regulations implementing the Crab FMP, including the CR Program, are located at 50 CFR part 680. Regulations implementing the GOA FMP are at 50 CFR part 679.

The CR Program allocates BSAI crab resources among harvesters, processors, and coastal communities. GOA groundfish fishery sideboards apply to CR Program vessels that (1) are not authorized to conduct directed fishing for pollock under the American Fisheries Act of 1998 (Public Law 105-227, Title II of Division C); (2) fished snow crab from 1996 through 2000; and (3) fish using any LLP groundfish licenses derived from these “non-AFA crab” vessels. Non-AFA crab sideboards are calculated by adding up the catches of vessels subject to sideboards during 1996 through 2000 and dividing that by the catches of all vessels in that fishery to yield a sideboard ratio (e.g., 0.10 or 10% of the Western GOA pollock fishery). The

sideboard ratio is multiplied by the TAC for that year; the sideboard limit is also divided into seasons. As described in the previous section, NMFS determines whether to open the sideboard fishery to directed fishing based on the sideboard limit and the potential harvest rate of participating vessels.

The Council recognized during its Amendment 83 deliberations that the non-AFA crab sideboard percentages resulting from its recommended sector allocations were not likely to provide enough TAC to support directed sideboard fisheries for all C/P gear types, in aggregate, let alone for individual C/P gear types.

The Council considered—and rejected—combining the GOA inshore and offshore non-AFA crab sideboards into a single Western GOA sideboard and a single Central GOA sideboard. Section 2.2.4 of the analysis prepared for this action notes that combining the inshore and offshore sideboards into a single non-AFA crab sideboard may not be desirable. The analysis notes that several C/Ps have participated in the GOA offshore non-AFA crab sideboard fisheries in recent years (see Table 2-24 of the analysis). Combining the inshore and offshore sideboards into a single amount for both C/Ps and CV sectors could result in one gear or operational type preempting the other in a race for the sideboards. Such a derby style fishery is inconsistent with the purpose and need for this action. Instead, the Council’s motion recommending Amendment 83 specified that the non-AFA crab sideboards would be recalculated to establish separate CV and C/P sideboards by gear type. The participation years used to recalculate the non-AFA crab sideboards remain 1996 through 2000. These recalculated sideboard ratios are shown in Table 2-51 of the analysis for this action. The Council and the analysis for this action noted that many of

the sideboard ratios are only a small fraction of the respective area TACs, and are not likely to support a directed fishery.

During its October 2011 meeting, the Council received public comment requesting that the Council/NMFS reconsider proposed Amendment 83 non-AFA crab sideboard provisions. Representatives of longline C/Ps subject to non-AFA sideboards asserted that the application of proposed Pacific cod sideboard limits could constrain their ability to use longline gear in a sideboard fishery. The Council noted that the proposed sideboard ratios were included in the analysis for this action and were considered by the Council at final action. During the meeting, NMFS noted that the proposed regulations would not exclude any individual vessels from a sideboarded fishery. As proposed, each vessel currently subject to non-AFA crab sideboards could continue to participate in the Central and Western GOA Pacific cod sideboard fisheries; however, each vessel must use the gear and operational type attributed to its catch history (i.e., for non-AFA crab sideboards, 1996 through 2000). After considering testimony during the October meeting, the Council did not recommend rescinding or otherwise revisiting the non-AFA crab sideboard fishing restrictions in § 680.22(a), LLP endorsements or restrictions, nor did it recommend changing how the sideboard ratios are calculated, per § 680.22(d), as part of the proposed regulations implementing Amendment 83; therefore, no changes were made to the proposed non-AFA crab sideboards in this final rule.

Jig Fishery

Amendment 83 expands opportunities for jig vessels by (1) potentially extending the Federal jig sector seasons to allow additional access to Federal waters; (2) providing an initial allocation that is higher than the sector's historical catch in the fishery; and (3) potentially

increasing the jig allocation, if a prior annual allocation is fully harvested. Historically, jig gear has been used by small-boat operators. The Council sought to enhance access for these entry-level participants. One consequence of any increase in the jig allocation is a proportional reduction in allocations to the other sectors.

In Amendment 83, the Council supported the increase of entry-level jig fishing opportunities, but recommended that NMFS coordinate State and Federal jig fishing seasons through the Joint Protocol Committee with the State Board of Fisheries (BOF). The Council's objective is to maximize seasonal access to Federal waters for jig vessels in conjunction with State waters jig fisheries, thereby increasing jig vessel fishing opportunities.

Coordination with the BOF has occurred recently. At its October 2011 meeting in Dutch Harbor, AK, the Council received a management report from NMFS describing how the proposed regulations to implement Amendment 83 may result in concurrent Federal and State guideline harvest level (GHL) fisheries for jig gear. The Council noted that the proposed rule meets the Council's intent to provide maximum access to Federal waters to vessels using jig gear, and that it provides maximum flexibility to the BOF to manage the State water GHL and parallel fisheries. NMFS and the Council noted that the State has the authority to open and close both the State GHL and parallel fisheries irrespective of the timing of Federal Pacific cod jig fishery Federal TAC seasons. Similarly, the Council and NMFS acknowledge the authority of the State to balance the increased management burden of concurrent State and Federal seasons and fully harvest the annual GHL.

At the October 2011 meeting, the Council requested that the BOF consider options to provide jig fishing opportunities concurrently in State and Federal waters, as proposed under

Amendment 83, when State regulations allow and where the BOF and State managers find it practical to implement. Subsequently, at the BOF October 2011 meeting in Anchorage, AK, the BOF recommended regulations for each State management area that synchronize, to the extent practicable, the State waters Pacific cod GHL season opening and closing dates with the Federal jig seasons opening and closing dates proposed under Amendment 83. Based on the actions of the BOF, no changes were required to be made to the proposed jig season dates in this final rule.

Summary of Regulations Implemented by this Final Rule

In order to implement Amendment 83's conservation and management objectives, this final rule implements the following amendments to the existing regulatory text at 50 CFR parts 679 and 680:

- Revises references to the inshore/offshore Pacific cod fishery in the Western and Central GOA throughout 50 CFR Part 679;
- Modifies existing regulations for surrendering and amending federal fishing permits (FFPs) at § 679.4;
- Prohibits vessels from participating in the State of Alaska's parallel fishery unless the vessel has the required FFP and LLP endorsements;
- Adds an FFP CQE floating processor endorsement, and a new Western and Central GOA CV endorsement on LLP licenses at § 679.4;
- Adds prohibitions necessary to monitor and enforce community protection provisions for processing entities in the Western and Central GOA at § 679.7;
- Establishes seasonal Pacific cod TAC allocations by sector in the Western and Central GOA regulatory areas, at § 679.20;

- Modifies existing regulations for apportioning halibut prohibited species catch (PSC) limits at § 679.21;
- Adds regulations to implement operational, vessel length, and gear type Pacific cod TAC allocations and reapportionments in the Western and Central GOA at § 679.20;
- Modifies existing regulations to include new jig seasons and remove expired regulations at § 679.23;
- Requires vessel monitoring systems (VMS) on all vessels engaged in mothership activity in the Western and Central GOA at § 679.28; and
- Adds operation and gear type specifications for non-AFA crab sideboard ratios at § 680.22.

Changes from the Proposed Rule to the Final Rule in Response to Comments

NMFS has changed proposed prohibitions at § 679.7(b)(5) and § 679.7(k)(1) and (2) to clarify that prohibitions on specified at-sea processing activity apply only in the GOA within the same calendar year. See the response to Comment 7 in the Response to Comments section below.

NMFS has changed proposed regulations at § 680.22(d) to clarify that non-AFA crab sideboards are assigned based on operation type and gear type. Proposed regulations erroneously added only the gear type and did not directly specify operation type. (See the response to Comment 9 in the Response to Comments section below.) Proposed regulations at § 680.22(d) were also modified consistent with regulations implementing Amendment 34 to the Crab FMP. (See the response to Comment 10 in the Response to Comments section below.)

NMFS has removed redundant regulatory text proposed at § 679.4(b)(4)(iii)(D), which addressed amending FFPs to add or remove species designations. Regulations at § 679.4(b)(5)(vi)(B) allow vessel owners with an FFP to add or remove species designations for Pacific cod, pollock, and Atka mackerel. (See Comment 22 in the Response to Comments section below.)

NMFS has dropped the proposed regulations at § 679.4(k)(10)(vii)(B)(1), redesignated § 679.4(k)(10)(vii)(B)(2) and (3) to (1) and (2), respectively, and added a new prohibition at § 679.7(b)(4)(vi) to clarify and complement these regulatory requirements. NMFS notes that the proposed regulatory text at § 679.4(k)(10)(vii)(B)(1) included an erroneous citation that was corrected in this final rule. (See Comment 23 in the Response to Comments section below.)

NMFS has modified the regulatory provision at § 679.20(a)(12)(ii) to clarify the sector hierarchy the NMFS Regional Administrator would consider during B season reallocation of the projected unused TAC allocations. (See Comment 28 in the Response to comments section below.)

Minor Technical Modifications from Proposed to Final Rule Regulatory Text

This rule amends regulations at 15 CFR section 902.1 to display the control number assigned by the Director of OMB for the collection of information requirement imposed by this final rule.

During review of the proposed regulatory text to implement Amendment 83 to the FMP, NMFS identified several non-substantive technical errors that are corrected and text that is clarified in this final rule. NMFS removed redundant text from § 679.4(f)(2)(v) because proposed regulations at § 679.4(f)(2)(v)(B) and (C) would require a CQE applicant to submit

information that is currently collected by NMFS RAM division or that is required in regulation by the definitions for “CQE floating processor” at § 679.2. NMFS corrected grammatical errors in the definitions of “Hook-and-line catcher/processor,” “Inshore component of the GOA,” “Mothership,” and “Pot catcher/processor at § 679.2. NMFS corrected a typing error in the regulatory provisions at § 679.4(f)(2)(v)(C) to clarify that SFP endorsements appear on FFPs not on FFPs. In addition, NMFS made minor modifications to the proposed text to clarify the following sections: in § 679.4(b)(4)(ii)(B) and (C), NMFS removed the words “in” and “for” and NMFS added the words “for,” “the following combination of,” and “and/” to clarify the regulatory text; in § 679.4(b)(5)(iv) NMFS removed the number “45.7” to clarify that the correct metric conversion is “38.1); in § 679.4(k)(10)(vii)(A), NMFS added the words “Pacific cod for the same gears and areas for which the license is currently endorsed, for” to clarify that the additional endorsements provided by this section apply to the same gears and regulatory area for which the license is currently endorsed; in § 679.4(k)(10)(viii)(F), NMFS added the words “that is accepted by the National Appeals Office” to clarify that appeals need to be accepted by the National Appeals Office; in § 679.7(b)(7), NMFS moved the phrase “and retain” from one part of the sentence to another to clarify that “and retain” applies to Pacific cod, not catch; in § 679.20(a)(12)(iii)(C) and (D), NMFS added the word “to” in order to clarify that the word modified the gear; and, in § 679.20(a)(12)(v), NMFS added the letter “s” to the word vessel to clarify that the word should be plural.

Response to Comments

As mentioned above, NMFS received 6 letters containing 29 unique comments during the public comment periods. Two non-industry letters were received and 4 letters were received

from the fishing industry. A summary of those comments, grouped by subject matter and NMFS' responses, follow.

Comment 1: Several commenters expressed general support for Amendment 83 to the FMP and its implementing regulations.

Response: NMFS acknowledges this comment.

Comment 2: Several commenters recommended partial approval of Amendment 83 to the FMP stating that particular provisions of the action were not adequately considered by the Council and that the Council process did not provide a meaningful opportunity for public comment. One comment requested that the Secretary not approve provisions of the action that would increase allocations to the jig sector based on the performance of that sector. Furthermore, the comment suggested that additional analysis and public comment is needed to evaluate any additional increases of Pacific cod TAC allocations to the jig sector, and the effect of those increases on the trawl CV sector. A second comment requested that the Secretary not approve the proposed TAC allocations to the trawl CV sector because the Council's recommended participation estimates did not include the trawl CV sector's historic use of Pacific cod discards in other fisheries. A third comment suggested that the Secretary reject the non-AFA crab sideboards; however, the FMP amendment does not address sideboards.

Response: The Secretary considered the comments recommending partial approval when he approved Amendment 83 on September 22, 2011. The Council described the rationale and mechanisms for jig and trawl CV allocations during its deliberations. The Council considered an extensive range of allocations under section 2.2.4 of the analysis prepared for this action and established a specific method to allocate catch based on a sector's best historic catch. The

Council discussed the impacts of the proposed increase in allocation to the jig sector and recommended that the jig sector be allocated TAC prior to the allocation of TAC to other sectors. Thus, each subsequent non-jig sector allocation would be reduced proportionally. The Council considered, but did not recommend, using historic discard rates of Pacific cod to calculate historic participation to establish each sector's allocation. The Council did not recommend including discards in part because the Council did not want to reward fishing practices that may not have minimized bycatch to the extent practicable. In both cases, the record reflects that the data used was the best available and does not bias the allocation for or against any particular sector. The Council evaluated the impacts of these provisions in the analysis, which was made available for public comment before the Council adopted Amendment 83. Public comments and the analysis were considered by the Council prior to adoption. NMFS considered all comments received by the end of the comment period, whether specifically directed to the FMP amendment or the proposed rule, in the decision to approve Amendment 83. (See sidebar discussion in the preamble above.)

Comment 3: Delay implementation of Amendment 83. NMFS should release a subsequent proposed rule that is responsive to public comments. A subsequent joint Council / BOF public process is needed to synchronize State and Federal Pacific cod jig fisheries before provisions to increase the jig allocation are implemented. NMFS should target the 2013 fishing year for implementation of Amendment 83.

Response: NMFS disagrees. As noted in the preamble to this final rule, the BOF acted to synchronize State regulation with the Federal regulations implemented by this final rule. Amendment 83 will be implemented by the 2012 fishing year. NMFS reviewed the provisions of

Amendment 83 and has determined that it is consistent with the national standards, other provisions of the MSA, and other applicable law. The Secretary approved Amendment 83 to the FMP on September 22, 2011.

Comment 4: Several commenters noted several errors in the preamble to proposed rule—

- In the third column, second paragraph on pg. 44709, the last sentence in that paragraph misstates the Council’s final motion. The motion accurately states that the jig sector B season would open on June 10 or after the State GHL season closes, or whichever happens later.
- The maximum retainable amount (MRA) for arrowtooth flounder is 5 percent, not 20 percent, as the proposed rule suggests. The MRA for arrowtooth flounder is described in Table 10 to Part 679, Gulf of Alaska Retainable Percentages.
- Prince William Sound is not within the Central GOA. The map suggests that the Eastern Gulf is NMFS Regulatory Area 649.

Response: NMFS agrees with these comments and has corrected descriptive text as necessary in the preamble of this final rule. No changes were necessary to regulatory text.

Comment 5: Allocating catch to each sector will not stop the race for fish within the sectors. Proposed regulations make it extremely difficult for NMFS fishery managers to control harvest within each sector’s allocation. Management measures are needed to minimize Pacific cod discards, minimize halibut bycatch, and address the race for fish within each sector for the sectors to survive under the proposed reduced Pacific cod allocation to some sectors.

Response: The objective of this action is to establish allocations for each gear sector in the GOA Pacific cod fishery in order to protect the relative catch distribution among sectors, and not to stop the race for fish within each sector. Section 2.2 of the analysis for this action noted

that sector allocations may reduce competition among sectors, but may not reduce the competition among vessels within each sector, nor slow down the rate at which fisheries are prosecuted. The problem statement notes that dividing the TAC among sectors may also facilitate the development of management measures to address Steller sea lion mitigation issues, bycatch reduction, and PSC avoidance issues. The effects of this action on management, monitoring, and enforcement were evaluated in Section 2.3.3 of the analysis, which indicates that the allocations of Pacific cod were based primarily on historical catch levels by each sector. The commenter seems to be promoting the use of catch shares in the fishery; however, catch share management of this fishery was not contemplated by the Council, and is outside the scope of this action.

Comment 6: One commenter supported the Council's intent to retain historic processing delivery patterns, including community participation in processing. The commenter supported prohibiting motherships from receiving deliveries of groundfish in the Central GOA and the two-percent processing cap in the Western GOA.

Response: NMFS acknowledges this comment.

Comment 7: NMFS should revise the regulatory text to restrict stationary floating processors in the GOA from mothership and C/P activity in the BSAI and the GOA within the same calendar year. Similarly, vessels that receive and process fish from other vessels within the boundaries of CQE communities should be prohibited from mothership and C/P activity in the BSAI and the GOA within the same calendar year. The Council motion clearly states, "Allow Federally-permitted vessels that do not meet the definition of stationary floating processor and that do not harvest groundfish off Alaska in the same calendar year."

Response: NMFS disagrees that regulatory prohibitions should be modified in the final rule to include mothership activity and C/P activity in the BSAI. The Council was explicit during deliberations that this action would only apply to the GOA. Specifically, the Council noted during deliberations that this action would affect participants in the Western and Central GOA and that the only provisions affecting participants in the Eastern GOA would be the FFP reissue limits, sideboard limits, and changes to halibut PSC limits.

This action is also intended to supersede the inshore/offshore allocations only in the Western and Central GOA. Moreover, NMFS disagrees with the commenter's interpretation of the Council's motion. When read in its entirety, the motion states as follows: "Retain the current definition of a stationary floating processor, but revise as follows so that there is no reference to the inshore component as applied to Pacific cod." The proposed rule for Amendment 83 included the modified definition and corresponding prohibitions as reflected in the Council's motion. NMFS notes that the title of Component 8 of the Council motion is "Community protection provisions (Western and Central GOA)." The BSAI is only mentioned in Component 8 of the Council's motion regarding AFA motherships and C/Ps that operate in the BSAI. In this specific instance, the Council recommends that a "vessel cannot operate as a stationary floating processor for Pacific cod in the GOA and as an AFA mothership in the BSAI during the same year" and that a "vessel cannot operate as a stationary floating processor for Pacific cod in the GOA and as a CP in the BSAI during the same year."

In response to this comment, NMFS has modified provisions at § 679.20(a)(12)(iii)(C), § 679.7(b)(5)(ii) and (iii), § 679.7(k)(1)(iv)(B), and § 679.7(k)(2)(ii) to clarify that these prohibitions apply to activity only in the GOA and not the BSAI.

Comment 8: The recommended non-AFA crab sideboards were not properly analyzed and would result in substantial economic impacts for the hook-and-line C/P sector that were not contemplated by the Council at final action and received little or no public comment. The set of years used to determine historical catch are arbitrary and were not included in initial review or discussion documents created for this action. As proposed, five licensed and endorsed hook-and-line C/P vessels would not be able to participate in the Pacific cod fishery in the GOA. NMFS should establish non-AFA crab vessel sideboards as separate C/P and CV sideboards, not by gear type.

Response: See discussion of sideboards in the preamble to this final rule above. The Council's motion explicitly specified that the non-AFA crab sideboards would be recalculated to establish separate CV and C/P sideboards by gear type. NMFS has modified § 680.22(d), which addresses GOA sideboard ratios, in this final rule to clarify that non-AFA crab sideboards can be allocated by operation type as well as gear type. The Council displayed these recalculated sideboard ratios in Table 2-51 of the analysis, which was available to the public for comment. These sideboard ratios were based on participation in the snow crab fishery from 1996 through 2000, years prior to the implementation of the CR Program. The Council noted that many of the Amendment 83 sideboard ratios are only a small fraction of the respective area TACs, and are not likely to support a directed fishery for C/Ps in aggregate, let alone for the hook-and-line C/P vessels. As part of this action, the Council considered and rejected single, combined C/P and CV, non-AFA crab sideboards for the Western and Central GOA regulatory areas. Section 2.2.4 page 86 of the analysis for this action notes that combining the inshore and offshore sideboards into a single sideboard may not be desirable for the non-AFA crab sideboards. The analysis

notes that several C/Ps have participated in the crab sideboard fisheries in recent years (see Table 2-24). Combining the inshore and offshore sideboards into a single amount for both C/Ps and CVs combined could result in one sector preempting the other in a race for the sideboards. Such a derby style fishery is not consistent with the purpose and need for this action.

Comment 9: The AFA sideboards proposed by the regulations exactly match the AFA CV sideboards listed in the 2011 specifications when combining the seasonal inshore and offshore allocations. Based on 2011 TACs, the proposed rule suggests that 2,794 metric tons (mt) of cod would be the annual limit, when combining the seasonal inshore and offshore limits, while the 2011 specifications suggest an annual limit of 2,793 mt for the Central GOA when the same calculation is made (i.e., combining the separate inshore and offshore allocations). This would be the expected outcome.

Response: NMFS agrees that a comparison of the actual 2011 non-exempt AFA CV sideboards with the example in the Amendment 83 proposed rule that depicts the same sideboards should match (with a minor difference due to rounding). The example in the proposed rule portrays how these sideboards will be calculated beginning in 2012, with area and seasonal sideboards for the Western and Central GOA.

Comment 10: The non-AFA crab sideboards in the proposed rule suggest that the combined C/P and CV annual allocation for all gear types is 1,873 mt; however, according to the final rule for Amendment 34 to the Crab FMP the annual limit for the combined inshore and offshore sectors is 2,563 mt. The annual caps for the two rules do not match; these two rules need to be reconciled. It is unclear whether the proposed rule for Amendment 83 incorporated the correction to the sideboard limits now that the appeals have been resolved.

Response: NMFS agrees, and has updated the non-AFA crab sideboards ratios associated with this final action. NMFS recalculated the non-AFA crab sideboard amounts using the agency's official catch records for vessels and LLP licenses subject to relevant crab sideboard restrictions. These data include the updated catch records that reflect the exemption of several vessels and their catch history from these records due to the implementation of Amendment 34 to the Crab FMP (76 FR 35772, June 20, 2011). Amendment 34 to the Crab FMP exempts additional recipients of crab quota share from GOA Pacific cod and pollock harvest sideboard limits. These sideboards apply to some vessels' LLP licenses that are used to participate in the GOA Pacific cod fisheries.

As part of the harvest specifications process, NMFS is updating the non-AFA crab sideboards ratios for each of the sectors and management areas from what was originally described in the proposed rule for this action. The sector-specific ratios originally calculated as part of the analysis associated with Amendment 83 were accurate based on the catch history of crab sideboarded vessels at that time. However, the aggregate non-AFA crab sideboard limits per management area originally were not calculated correctly. For example, the analysis for this action suggested that the aggregate Central GOA sideboard percent of TAC was 4.64 percent. By comparison, the aggregate sideboard percent of TAC for the Central GOA as calculated by NMFS in association with the implementation of Amendment 34 to the Crab FMP is 6.4 percent. Applying the sector-specific sideboard ratios to the correct, aggregate non-AFA crab sideboard portion of each TAC limit yields revised sideboard limits that reconcile the differences between the aggregate limits, as noted in the comment. This methodology will be used in future annual harvest specifications to calculate the non-AFA crab sideboard limits for each applicable Pacific

cod sector. As mentioned several times in this preamble, sideboards are implemented through the harvest specification process. The example table below is not implemented through this final rule and is included here only as an example. This table portrays how these updated ratios would have been applied to the 2011 Pacific cod TAC and seasonal apportionments.

Example calculation of the GOA Pacific cod sideboard limits for non-AFA crab vessels by sector and season, using the 2011 Pacific cod TACs for the Western and Central GOA.

Non-AFA Crab Vessel Sideboards			
	% Sideboard of TAC	2011 Estimated sideboard (mt)	
Western GOA		A Season (60 percent)	B Season (40 percent)
TAC: 22,785 mt			
Hook-and-line CV	0.04	5	4
Pot CV	9.97	1,363	909
Trawl CV	0.07	9	6
Hook-and-line C/P	0.18	25	17
Pot C/P	0.78	107	71
Total C/P	0.96	131	88
Total CV	10.08	1,378	919
Total	11.04	1,509	1,006
Central GOA			
TAC: 40,362 mt			
Trawl CV	0.12	28	19
Hook-and-line CV	0.01	3	2
Jig CV	0.0	0	0
Pot CV	4.74	1,149	766
Hook-and-line C/P	.12	28	19
Pot C/P	1.36	329	220
Total C/P	1.48	358	238
Total CV	4.87	1,180	787
Total	6.35	1,538	1,025

Comment 11: Amendment 80 sideboards are not mentioned in the proposed rule text,

which incorporates GOA Pacific cod sideboards in the BSAI non-AFA trawl C/P trawl catch share program (Amendment 80). The commenter wanted clarification that these sideboards will remain effective and that when merging the Amendment 80 and Amendment 83 programs, the most restrictive management regime will apply as appropriate. Presently, Amendment 80 sideboard limits are 4.4 percent of the Central GOA Pacific cod TAC and 2.0 percent of the Western GOA Pacific cod TAC. Applying these sideboard ratios to the 2011 Central GOA TAC of 40,362 mt would suggest that the Amendment 80 sideboard limit in the Central GOA would be 1,776 mt annually (60 percent - A season = 1,066 mt and 40 percent - B season = 710 mt). The commenter compares these estimates to the C/P trawl allocation proposed in Amendment 83 for the GOA split of 4.2 percent of the non-jig allocation and divided based on historical catch of the C/P trawl sector, 47.6 percent for the A season and 52.4 percent for the B season. The calculations are based on 2011 TAC (after the jig allocation), suggesting an annual allocation of 1,678 mt (A season = 801 mt and B season = 877 mt).

Response: NMFS agrees with these calculations, as portrayed (1) in the final 2011 and 2012 harvest specifications for groundfish of the GOA, which specifies the Amendment 80 sideboard limits; and (2) in the proposed trawl C/P allocations in the proposed rule for Amendment 83. NMFS will use the C/P trawl sector allocation and seasonal allowances to determine future management actions, such as directed fishing closures that affect this sector.

Comment 12: Uphold the rule as proposed. This action protects the Pacific cod fishery from shifting effort to vessels using trawl gear, and ensures the long-term productivity and viability of the fishery.

Response: NMFS notes that this action will provide stability to the participants in the

Pacific cod fishery. This action establishes Pacific cod sector allocations in the Western and Central GOA based primarily on historical catch levels by each sector. With the exception of the jig sector, the timing, location, and overall level of fishing effort in the GOA Pacific cod fishery is not expected to change the management of the fishery. The Western and Central GOA jig sector allocation initially will be set above historic catch levels (typically less than 1 percent of the TAC in each area), and will increase further if the initial allocations are fully harvested. Similarly, jig allocations will decrease if TAC allocated to the jig sector remains unharvested. However, the jig sector allocation will not drop below its initial level. By establishing Pacific cod gear allocations based on the historical catch for non-jig sectors, this action provides a stable proportion of the Pacific cod TAC to all participants in the fishery, regardless of gear type. This assurance of the available proportion of the annual TAC to each gear type provides for long-term participation from all current gear sectors.

Comment 13: The final rule is necessary to protect the endangered western distinct population segment of Steller sea lions and their designated critical habitat.

Response: NMFS disagrees. Although this action may indirectly benefit Steller sea lions by promoting a shift to less intensive gear types, it is not necessary for the protection of Steller sea lions and their designated habitat. This action is intended to stabilize the GOA Pacific cod fishery. . See response to Comment 12. The effects on Steller sea lions and their designated critical habitat and on other ESA-listed species are described in an environmental assessment for Amendment 83. No adverse effects on ESA-listed species or their designated critical habitat beyond those already analyzed for the GOA Pacific cod fisheries in previous biological opinions are expected from this action. The GOA Pacific cod fishery as currently prosecuted was

analyzed in the 2010 Biological Opinion for the Authorization of Groundfish Fisheries under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, the Authorization of Groundfish Fisheries under the Fishery Management Plan for Groundfish of the Gulf of Alaska, and State of Alaska Parallel Groundfish Fisheries. This biological opinion determined that no further restrictions were needed to ensure the GOA Pacific cod fisheries as currently prosecuted would not likely adversely modify designated critical habitat for Steller sea lions or put it in jeopardy of extinction.

Comment 14: The proposed concurrent jig seasons are in direct conflict with the Council motion and intent. Concurrent State and Federal jig seasons could strand State-waters GHL jig quota. A fixed March 15 A-season Federal jig season closure is necessary to allow the jig sector to access State GHL before it harvests its Federal TAC. The final rule should revise the jig gear opening and closure dates to match the Council motion, which specified that the jig A-season closure date should be when the TAC is reached or on March 15, whichever occurs first.

Response: See discussion of BOF and jig provisions above in the preamble to this final rule and the discussion of the jig season in the preamble to the proposed rule implementing this action. During its October 2011 meeting, the BOF chose not to recommend that the Council and NMFS implement a March 15 closure date; therefore, no change to the proposed regulations implementing the jig A and B season start dates is necessary.

Comment 15: This action increases demand for limited management resources in ways that were not contemplated by the State or by this action. If concurrent jig seasons occur, as proposed, the burden on State managers would increase and would require Kodiak managers to

increase outreach and coordination with the jig fleet to ensure accurate accounting of landings.

Response: See discussion of BOF and jig provisions above in the preamble to this final rule. NMFS acknowledges this comment and notes that during its October 2011 meeting, the BOF recommended management measures to mitigate many of the State managers' concerns in the event that concurrent seasons occur. The regulations implementing these management measures can be found in State regulations at: 5 AAC 28.467 for the Kodiak Area Pacific Cod Management Plan; 5 AAC 28.537 for the Chignik Area Pacific Cod Management Plan; 5 AAC 28.577 for the South Alaska Peninsula Area Pacific Cod Management Plan; 5 AAC 28.367 for the Cook Inlet Pacific Cod Management Plan; and 5 AAC 28.267 for the Prince William Sound Pacific Cod Management Plan. In the preamble to the proposed rule to implement Amendment 83, NMFS acknowledged the burden that concurrent Federal and State Pacific cod jig seasons could have on State fishery managers

Comment 16: The Joint Protocol Committee is a collaboration of the Council and the BOF, and not a NMFS/BOF process. The Council sets Federal fisheries policy, NMFS regulates the Federal fisheries, the BOF sets State policy, and the Alaska Department of Fish and Game regulates State fisheries.

Response: See discussion of BOF and jig provisions above in the preamble to this final rule. The preamble to this final rule has been clarified to accurately describe the relationship between the NMFS and the BOF.

Comment 17: The proposed rule does not specify how the stair-step provisions for the jig fishery will work in the Western GOA, where the initial allocation is 1.5 percent.

Response: NMFS notes that the stair-step provisions for the jig fishery will be

addressed in future notices of proposed annual fishery specifications. However, NMFS has modified Table 3 from the preamble to proposed rule to provide examples how the stair-step provisions might be implemented in the annual fishery specification process—

Table 1. Examples of Harvest Scenarios Affecting the Annual Jig Sector Allocation of Pacific Cod in the Western and Central Gulf of Alaska Regulatory Areas.

If the previous year's jig sector allocation in the Western or Central GOA regulatory areas—	Then, in the following year, the jig sector's portion of the Federal Pacific cod TAC would—
Was less than 6 percent of the total Federal Pacific cod TAC in that area and 90 percent, or greater, of the TAC was harvested in a given year	Increase by one percent unless the previous year's Western GOA jig TAC was 5.5 percent, then the following year the TAC would increase by 0.5 percent.
Was 6 percent of the total Federal Pacific cod TAC in that area and 90 percent, or greater, of the TAC was harvested in a given year	Not change.
Was equal to or less than 6 percent of the total Federal Pacific cod TAC in that area and less than 90 percent of the TAC allocated prior to the most recent stair-step increase was harvested in that year	Not change.
Was equal to or less than 6 percent of the total Federal Pacific cod TAC in that area and less than 90 percent of the TAC allocated prior to the most recent stair-step increase was harvested for a total of two consecutive years	Decrease by one percent unless the previous year's Western GOA jig TAC was 2 percent, then the following year the TAC would decrease by 0.5 percent.
Was equal to one percent in the Central GOA or 1.5 percent in the Western GOA and less than 90 percent of the TAC was harvested in the last two consecutive years	Not change.

Comment 18: If the BOF recommends a March 15 closure, or any fixed date closure of the Federal A season for vessels using jig gear following the close of the comment periods for the Amendment 83 proposed rule, could it be incorporated into the final rule implementing Amendment 83 without additional due process?

Response: See discussion of BOF and jig provisions above in the preamble to this final rule. Any BOF recommendation not described in the proposed rule or analysis for this action would occur through the Joint Protocol Committee as a subsequent action that would require additional Council review and notice and comment rulemaking. No subsequent action is necessary at this time because the BOF synchronized State management with the proposed concurrent season dates. Similarly, no change is necessary to the Federal A season for the jig sector in this final rule from those dates proposed in the proposed rule.

Comment 19: The commenter suggested that the jig sector has large growth potential and should be held to the same standards and requirements as other Federal Pacific cod fishery participants for reporting, recordkeeping, species and gear endorsement on their FFP, VMS, and observer coverage requirements (including proposed observer restructuring program). The proposed jig seasons guarantee Federal jig allocations will be fished and accessed first, thus reducing Pacific cod allocations to non-jig sectors. Jig sectors will automatically reach the 6 percent cap in 5 years.

Response: The Council anticipated the potential for growth in the jig sector under a gradually increasing allocation that could also be adjusted downward if specific catch limits are not met. If the growth of the jig sector increases more than the Council and NMFS anticipate, the Council could recommend, and NMFS could implement, additional management measures to limit that growth. As described in detail in the proposed rule for this action, the initial jig sector allocations in the Western and Central GOA Pacific cod fisheries implemented by this action are already higher than historic catch levels. There are no data to indicate harvests are likely to increase. The commenter is raising concerns that do not appear to be supported by current data

trends. Jig vessel operators fishing exclusively in State waters are not required to hold an FFP or a groundfish LLP license. No observer coverage is currently required in the State GHL fisheries.

As described in the preamble to the proposed rule of this action, jig gear is exempt from some requirements that apply to other gear types in Federal waters, including the requirement for VMS in Federal waters and in the requirements of the Federal Observer Program. Jig vessels fishing in Federal waters must obtain an FFP and comply with Federal recordkeeping and reporting requirements. Vessels using jig gear are not required to have an endorsement on their FFP to participate in the directed Pacific cod fisheries in the GOA. Consequently, vessels using jig gear are exempt from the VMS requirement (§ 679.7(a)(18)).

The impacts of requiring vessels to have species and gear endorsements on their FFP and VMS were discussed in section 2.2.10 of the analysis for this action. The jig exemptions are intended to ensure that there are opportunities for vessels to use jig gear in the GOA Pacific cod fisheries. These exemptions meet the purpose and need for this action by providing a limited opportunity for entry-level vessel operators to participate in the Federal Pacific cod fishery without the obligations and costs that they may incur if a Pacific cod endorsement and VMS were required.

The Council's October 2010 motion to restructure the funding and deployment system for observers in North Pacific groundfish and halibut fisheries does not exempt vessels using jig gear from the observer program.

Comment 20: One commenter supported proposed regulations to prevent federally permitted vessels from surrendering and reactivating their FFP on an unlimited basis.

Response: NMFS acknowledges the comment.

Comment 21: Vessels that have an LLP license with a Pacific cod endorsement in the Central or Western GOA with trawl, hook-and-line, or pot gear endorsements should be prohibited from harvesting Pacific cod allocated to the jig sector to preserve the entry-level opportunities for new participants. The jig allocation was not intended to expand opportunities for vessels with fishing history that qualified for LLP endorsements under the Amendment 86 fixed gear recency action that became effective on April 21, 2011 (76 FR 15826).

Response: NMFS disagrees. NMFS clarifies that vessels with LLP license endorsements for other gear types in Western or Central GOA can participate in the jig sector. The Council's motion did not recommend limiting new entrants to the jig fishery, and no changes to the proposed regulatory text were made in response to this comment.

The RIR for this action analyzed the number of vessels using jig gear that also had groundfish LLP licenses from 2000 through 2009, in Table 2-54 of section 2.2.5. In the Western GOA, one to six vessels, and in the Central GOA, five to eight vessels participated in the GOA Pacific cod fishery with jig gear and held LLP licenses. Similarly NMFS analyzed the impacts of increasing the jig allocation to 6 percent of the TAC in the Western and Central GOA. Prior to taking final action, the Council considered options to establish initial allocations of 1 percent, 1.5 percent, or 2 percent of the Central GOA Pacific cod TAC, and 1 percent or 1.5 percent of the Western GOA Pacific cod TAC for the jig sector, with a stair-step provision to increase the jig allocation by 1 percent, if 90 percent of the Federal jig allocation in a management area is harvested in a given year. The Council also considered the impacts of a jig allocation capped at 5 percent, 6 percent, or 7 percent of the respective Western and Central GOA Pacific cod TACs.

NMFS agrees that the intent of this action is to provide entry-level opportunities in the jig fishery and notes that participants in the jig fishery have historically used small vessels. As part of this action, the Council did not define “entry-level” as it pertains to the jig fishery. The Council and NMFS did, under the Amendment 86 fixed-gear recency action, exempt jig vessels from the LLP license requirements if the vessels are limited to no more than five jigging machines, 30 hooks per line, and one line per machine (§ 679.4(k)(2)(iii)). Vessels that do not meet the participation requirements of the fixed-gear or trawl recency actions could participate in the jig fishery if they conform to the gear limits of the exemption. Moreover, any vessel that did not participate in the jig fishery prior to the Pacific cod sector allocation could be considered an entry-level and/or new participant in the jig sector. It is equally possible under this action that vessel owners with LLP licenses endorsed for other gear types may choose to use jig gear to fish for Pacific cod in the Western or Central GOA during a non-jig gear season or after the season and/or the allocation for that non-jig gear season has closed. This action does not limit traditional small boat operators from entering the fishery. In fact, the action expands entry-level opportunities for small vessels by making more TAC available and retaining an LLP license exemption that favors small vessels, as it may not be economically feasible for large vessels to operate only 5 jig machines.

Comment 22: One commenter suggested that the proposed regulations would not restrict an FFP holder from removing Pacific cod species endorsements from that FFP. They suggested that § 679.4(b)(4)(iii)(D) should be revised to include pollock and Atka mackerel gear type endorsements along with Pacific cod. This would allow a vessel to remove all species

endorsements to participate in a State fishery and then add the endorsement when the vessel wishes to again participate in a Federal fishery requiring VMS coverage.

Response: NMFS agrees that the proposed regulations at § 679.4(b)(4)(iii)(D) would not restrict an FFP holder from removing Pacific cod species endorsements from that FFP.

However, existing regulations allow a vessel owner to amend their FFP to add or remove species designations for Pacific cod, pollock, and Atka mackerel. In response to the comment NMFS has determined that the proposed regulation at § 679.4(b)(4)(iii)(D) superfluous with the existing regulations. Therefore, NMFS has removed the redundant proposed regulation at § 679.4(b)(4)(iii)(D) from this final rule. This action limits holders of an FFP from removing endorsements for C/P operation type, CV operation type, trawl gear, hook-and-line gear, pot gear or jig gear, and the GOA area endorsement. NMFS notes that GOA Pacific cod endorsements are not simple species endorsements; they are compound endorsements that include a species, operation type, and a gear as part of the same one endorsement. To clarify, this action will not preclude an FFP holder from amending the species endorsements on the FFP. Currently, a vessel owner can amend their FFP to add or remove species designations for Pacific cod, pollock, and Atka mackerel under regulations at § 679.4(b)(5)(vi)(B). To simplify the regulations, NMFS has removed the redundant regulatory text proposed at § 679.4(b)(4)(iii)(D).

Under Amendment 83, vessels participating in the directed Pacific cod fishery in Federal waters using trawl, pot, or hook-and-line gear are required to have an FFP with a Pacific cod fishery endorsement, and are required to use VMS to facilitate enforcement of closed areas around sea lion rookeries and haulouts, and to enforce gear closures in sensitive habitat. Vessels using jig gear are exempt from this requirement. The VMS requirement only applies if the FFP

has an Atka mackerel, Pacific cod, or pollock species endorsement. These FFP species endorsements are required to participate in the directed fisheries for these species. An FFP holder can remove the species endorsement from the FFP (without surrendering the FFP) at any time during the 3-year term of the permit and participate in State fisheries exempt from VMS coverage. Only a small number of vessels have surrendered the FFP in recent years. In 2008, there were approximately 1,700 FFPs, 1,500 of which had GOA area endorsements. Data provided by NMFS Restricted Access Management Program (RAM) indicate that 12 to 25 FFPs with GOA area endorsements were surrendered per year, during 2003 through 2008 (see Table 2-66 in 2.2.10 of the analysis for this action). Based on the timing of these surrenders, it appears that some vessels surrendered the FFP prior to participating in the Aleutian Islands or GOA State waters Pacific cod fisheries.

Comment 23: One commenter supported provisions of the action providing the holder of an LLP license with a C/P endorsement with the opportunity to make a one-time selection to add a CV endorsement for Pacific cod if the LLP was used to make at least one Pacific cod landing while the vessel was operating as a CV. The commenter recommended that NMFS clarify that under Amendment 83, a holder of an LLP license with a C/P endorsement electing to add a CV endorsement for Pacific cod could continue to operate as a C/P in other directed fisheries; however, incidental catch of Pacific cod in those fisheries would accrue to the CV cod allocation.

Response: NMFS acknowledges the support for this provision, and agrees that clarification is necessary. NMFS clarifies that each eligible LLP license holder with a C/P endorsement that elects to permanently add a CV endorsement for Pacific cod to their Central and/or Western GOA license will retain their C/P endorsement on their license. The additional

CV endorsement(s) will not affect the license's existing operation type endorsement, and the license holder will continue to be eligible to participate as a C/P in all other GOA and BSAI groundfish fisheries. It is important to note that NMFS cannot require that a vessel process its catch on board; however, the license holder would need a CV FFP operation type endorsement to act as a CV, and a separate C/P FFP endorsement to process its own harvest at sea. Therefore, Pacific cod catch in the Western and Central GOA Pacific cod fisheries using LLP licenses held by persons that decline to receive a CV Western and/or Central GOA endorsement will accrue to the C/P allocations. The result is that holders of an LLP license with a C/P Pacific cod endorsement can operate as either a C/P or CV, but catch from their vessels will accrue only to the C/P allocation for their respective gear type. Conversely, C/P LLP license holders that elect to receive an additional CV Pacific cod endorsement could no longer participate as a C/P in the Western or Central GOA directed Pacific cod fisheries, and their catch would only accrue to the respective CV allocations. Requiring vessels to make a one-time election to operate as either a C/P or CV in the GOA Pacific cod fishery simplifies the administration of this licensing restriction, and meets the Council's objective of preventing C/P license holders from opportunistically fishing off of both the C/P and CV Pacific cod sector allocations.

In response to this comment, NMFS has modified these regulatory provisions and added prohibitions to clarify these requirements in the final rule. Regulations proposed at § 679.4(k)(10)(vii)(B) and (C) establish these LLP permit requirements. NMFS notes that the proposed regulations at § 679.4(k)(10)(vii)(B)(1) included an erroneous citation. First, NMFS has removed proposed regulations at § 679.4(k)(10)(vii)(B)(1) and has redesignated proposed § 679.4(k)(10)(vii)(B)(2) and (3) as (1) and (2), respectively. Finally, this rule includes a

prohibition at § 679.7(b)(4)(vi) to clarify and complement these regulatory requirements. NMFS notes that this action is consistent with the analysis for this action as described in the preamble to the proposed rule (page 44719; first column; second full paragraph) that stated in order “[t]o protect communities historically invested in the inshore sector under the inshore/offshore split, C/Ps electing to add a CV endorsement in the Western or Central GOA would be prohibited from acting as a C/P in the directed Pacific cod fishery.”

Comment 24: One commenter suggested that the proposed measures to limit access to the Pacific cod parallel fishery should be expanded to all Federal fisheries with concurrent parallel fisheries. NMFS should prohibit all Federal fishery participants from surrendering their FFP for any Federal fishery, not just Pacific cod. Such a measure would simplify regulations.

Response: NMFS acknowledges this comment; however, limiting access to other parallel fisheries is beyond the scope of the action. The Council could take up such measures as part of a subsequent action. NMFS notes that surrendering an FFP is voluntary and is not prohibited by this action. Under this action, NMFS will not reissue an FFP that is surrendered until the end of the 3-year FFP reissue cycle.

Comment 25: The rule suggests that RAM will notify only eligible holders of LLP licenses with a C/P endorsement of the one-time election opportunity to add a CV Pacific cod endorsement. All C/P LLP license holders should receive notice from RAM with regards to their ability or inability to add the CV endorsement and their opportunity to appeal the decision. NMFS should clarify that there is no deadline for the holders of C/P licenses to make the one-time election, and that an LLP license holder can change endorsement status anytime within a calendar year.

Response: This action allows holders of Western and Central GOA LLP licenses with a C/P endorsement to make a permanent, one-time election to operate as a CV in the Western and Central GOA Pacific cod fisheries, if the LLP license was used to make a minimum of one Pacific cod landing while operating as a CV under the authority of the C/P-endorsed LLP license during the qualifying period. NMFS notes that only LLP holders that apply for the one-time election can appeal an initial administrative determination to disapprove the addition of a CV Pacific cod endorsement. Electing to add a CV endorsement is voluntary. RAM will notify only the holders of C/P-endorsed LLP licenses meeting the qualifying criteria following a review of the official record established for the Amendment 86 fixed gear recency action, which includes catch history from 2002 through December 8, 2008. RAM will notify only holders of C/P-endorsed LLP licenses that they have been identified as candidates for the election. However, any LLP holder can apply for the election to add the CV endorsement.

NMFS will make this final rule available to the public through publication in the Federal Register (see ADDRESSES). LLP license holders are urged to apply for the CV endorsement whether or not they receive a letter from NMFS. If a holder of a C/P-endorsed LLP license is denied the endorsement after requesting it, he or she can submit information regarding eligibility to NMFS as described in the appeals process at § 679.43. Table 2-47 of Section 2.2.2 of the analysis for this action shows the number of C/P-endorsed LLP licenses that qualified under the trawl or fixed gear recency actions and have at least one CV Pacific cod landing in the GOA during 2002 through 2008. If a vessel owner uses multiple LLP licenses on a vessel and one of those is a C/P-endorsed LLP license eligible to harvest Pacific cod in the Western or Central GOA, all Pacific cod catch in the Western or Central GOA will count against the C/P sector

allocation. NMFS clarifies that eligible holders of C/P-endorsed LLP licenses can make the one-time CV endorsement election at any time of the year or at a future date. NMFS notes that this one-time election is permanent and the CV endorsement cannot be removed from the LLP license at a later date, by the current or any subsequent LLP holder.

Comment 26: According to the preamble to the proposed rule, NMFS estimates that 171 mt of Pacific cod would be deducted from the Central GOA trawl CV TAC. The proposed rule calculates this value by multiplying 2.09 percent by B season trawl CV allocation of 8,171 mt (8,171 mt times 2.09 percent = 171 mt). This calculation is incorrect. The regulatory impact review, environmental assessment, and initial regulatory flexibility analysis (RIR/EA/IRFA) state that the incidental catch allocated to trawl CVs for the Central GOA Rockfish Program (currently, 2.09 percent of the Central GOA Pacific cod TAC) will be deducted from the Central GOA trawl CV B season allocation. So the calculation should be (Total Pacific cod TAC, 2011 as the example, of 40,362 mt times 2.09 percent = 844 mt). Thus, the Rockfish Program Pacific cod cooperative quota is 844 mt, and the B season CV trawl cod allocation is 8,171 mt minus 844 mt, which equals 7,327 mt for the limited access Central GOA trawl CV sector.

Response: NMFS agrees. The example calculation included in the preamble to the proposed rule to implement Amendment 83 was not accurate. Although no changes are necessary to this final rule, each proposed and final harvest specifications rulemaking will apply the correct method for estimating the amount of Pacific cod that would be deducted from the Central GOA trawl CV TAC allocation.

Comment 27: The Council typically recommends each TAC so that total harvests in the State GHL and Federal TAC fisheries are equal to the acceptable biological catch (ABC).

However, the rule states, “The Council recommends each TAC so that total harvests under the State GHL and Federal TAC fisheries are slightly below the ABC to ensure that the ABC is not exceeded.”

Response: The FMP requires TACs to be set at or below ABCs. For Pacific cod, the TAC is recommended by the Council based on the ABC minus the amount of harvest authorized by the State for its GHL fishery. If the management of a fishery is sufficient to reliably limit harvests to the TAC, the TAC is more likely to be set close to or at ABC. For fisheries with more management uncertainty, the TAC is generally set lower than ABC. For Pacific cod in the GOA, there is less management uncertainty than for other stocks and the combined TAC and State GHL is set equal to the ABC.

Comment 28: The proposed rule is unclear about how NMFS and the Alaska Regional Administrator would reallocate any projected unused allocations of Pacific cod TAC. NMFS should clarify if the combined pot C/P and CV sector would be treated as a CV sector (i.e., before C/P sectors), or if the combined pot CV and C/P sector would receive reallocation priority over other sectors. According to the Council motion, CV sectors have the first priority for reallocated Pacific cod.

Response: NMFS agrees. NMFS recognizes the potential for Pacific cod TAC to rollover from the A season to the B season, within the fishing year. Similarly, NMFS can reallocate the projected unused allocation in the B season among gear types, to harvest the remaining Pacific cod TAC. NMFS has modified the regulatory provision at § 679.20(a)(12)(ii)(B) to clarify that the NMFS Alaska Regional Administrator would consider reallocation of the projected unused allocation in the B season to the CV sectors first. Then the Regional Administrator would

consider a reallocation in the B season to the combined CV and C/P pot sector. Finally, the Regional Administrator would consider reallocation in the B season to all other C/P sectors. The Regional Administrator would take into account the capability of a sector to harvest the remaining Pacific cod TAC in any reallocation decision. Any portion of the CV, C/P, or jig allocation determined by the NMFS Regional Administrator to remain unharvested during the remainder of the fishing year will be reallocated as soon as practicable. While the CV sectors will have priority, it is possible the Regional Administrator may choose to allocate unused TAC to C/P sectors to fully harvest the remaining TAC, as required at § 679.20(a)(12)(ii)(B) by this final rule.

NMFS notes that combined pot CV and C/P catch history is largely comprised of pot CV landings, as described by Table 2-43 of the analysis for this action. The Council noted that the potential allocation to the pot C/P sector may not support a directed fishery; therefore, the Council recommended a combined pot CV and C/P sector to ensure that pot C/Ps may participate in the Western and Central GOA directed Pacific cod fishery.

Comment 29: Regulations implementing Amendment 83 will negatively impact the Central GOA CV trawl sector and will create economic instability for this sector that has significant long-term investments in the fishery. The allocation method adopted by the Council was arbitrarily designed to reduce the Central GOA CV trawl sector's allocation and instead favored pot, hook-and-line, and jig (non-trawl) sectors. The Council should have considered catch history from 1995 through 2005 in the Central GOA, which favored the CV trawl sector and disfavored some non-trawl sectors. No rationale for treating the Western and Central GOA catch history differently was presented. The proposed Central GOA CV Pacific cod allocations

are based on retained catch only (no discarded catch). Therefore, the Central GOA trawl CV sector will receive a smaller Pacific cod allocation than their historical usage. Historically, the Central GOA trawl CV sector has discarded as much as 27 percent of its annual catch due to regulatory discard requirements. Halibut PSC limits will close the Central GOA CV trawl sector B cod fishery prior to the full harvest of the sector's TAC allocation. NMFS should increase the Pacific cod A season and reduce the sector's B season allocation under Amendment 83 to address halibut bycatch concerns, as was done in the Western GOA.

Response: NMFS disagrees. No changes were made to the sector allocations implemented by this final rule. The Council's recommended TAC allocation for the Central GOA CV trawl sector is based on the best available science, as described in section 2.2 of the analysis for this action. Specifically, the analysis considered the catch history from 1995 through 2010 by each of the sectors in both the Western and Central GOA. These data are summarized in Table 2-42.

Section 2.2.4 of the analysis describes the Council's rationale for selecting each sector's best catch history for assigning sector allocations. In making its allocation recommendations, the Council considered that, in general, the amount of Pacific cod harvested by trawl CVs in the Western and Central GOA has declined, while the amount harvested by pot CV sector has increased. The Council noted that using each sector's best catch tends to increase each sector's allocation to a percentage that is substantially higher than the sector's average. The Council also noted that the potential sector allocations it considered generally favored non-trawl sectors in more recent years. This trend is particularly apparent for trawl CVs in the Western GOA, so the Council chose to adjust allocations accordingly. NMFS notes that the Council did not

recommend similar adjustments for trawl CVs in the Central GOA because this area was less impacted by Steller sea lion mitigation measures than the Western GOA.

The Council chose to define qualifying catch as all retained catch of Pacific cod from Federal and State parallel fisheries based on its experience with similar actions, public testimony during Council meetings, and historic catch estimates by sector, as reported in the analysis for this action. The tables in Appendix A to the analysis for this action report annual catches by each sector in the Western and Central GOA Pacific cod fisheries during 1995 through 2008 and, in some cases, through 2010. The Council's recommendation to not include discards in historic use estimates is consistent with the purpose and need statement that recognizes that competition among sectors may increase discards. Including discards would be contrary to the intent of this action to promote sustainable fisheries. Although the Council did not include discards in establishing each sector's catch history, the Council included catch destined for meal production. The Council noted the high rates of meal production for the trawl CV sector in section 2.2.3 of the analysis for this action.

NMFS notes that this action does not change the halibut PSC limits for trawl CVs. The analysis describes that trawl vessels, and to a lesser extent hook-and-line vessels, currently race to catch Pacific cod at the highest possible rate during the B season, because halibut PSC limits could close directed fishing for Pacific cod in the B season at any time. Amendment 83 is not expected to directly impact halibut PSC removals. However, the Council is considering separate action to address halibut PSC limits for trawl and fixed gear in the GOA.

Classification

The Administrator, Alaska Region, NMFS determined that this final rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the MSA and other applicable law.

Small Entity Compliance Guide

The preamble to the proposed rule and this final rule serve as the small entity compliance guide required by Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS at the following website: <http://alaskafisheries.noaa.gov>.

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

Final Regulatory Flexibility Analysis

This final regulatory flexibility analysis (FRFA) incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. NMFS published the proposed rule on July 26, 2011 (76 FR 44700) with comments invited through September 9, 2011. An IRFA was prepared and summarized in the "Classification" section of the preamble to the proposed rule. The description of this action, its purpose, and its legal basis are described in the preamble to the proposed rule and are not repeated here. The FRFA describes the impacts on small entities, which are defined in the IRFA

for this action and not repeated here. Analytical requirements for the FRFA are described in Regulatory Flexibility Act, section 304(a)(1) through (5), and summarized below.

The FRFA must contain:

1. A succinct statement of the need for, and objectives of, the rule;
2. A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
3. A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available;
4. A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
5. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The “universe” of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment would be considered the universe for

purposes of this analysis.

In preparing a FRFA, an agency may provide either a quantifiable or numerical description of the effects of a rule (and alternatives to the rule), or more general descriptive statements, if quantification is not practicable or reliable.

Need for and Objectives of this Final Action

The Council developed a purpose and need statement defining the reasons for considering this action, as described in Section 1.1 of the analysis for this action. The Western and Central GOA Pacific cod fisheries are currently managed as limited access fisheries in which the sectors race each other for shares of the TACs. Participants who have made significant long-term investments, who have extensive catch histories, and who are highly dependent on the GOA Pacific cod fisheries desire stability in the form of sector allocations. Without sector allocations, future harvests by some sectors may increase and impinge upon historical levels of catch by other sectors, with undesirable economic, socioeconomic, and social consequences for fishery participants and the communities that support and depend upon them. The objective of this action is to establish direct allocations for each gear sector in the GOA Pacific cod fishery, in order to preserve the relative catch distribution among sectors. The problem statement notes that dividing the TAC among sectors may also facilitate the development of management measures to address Steller sea lion mitigation issues, bycatch reduction, and PSC mortality avoidance issues. As noted in the preamble to this final rule, these management measures also promote conservation.

The legal basis for this action is the MSA. One of the stated purposes of the MSA is to promote domestic commercial fishing under sound conservation and management principles

and to achieve and maintain the optimum yield from each fishery. The MSA also requires conservation and management measures take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

Summary of Significant Issues Raised during Public Comment

No comments were received that raised significant issues in response to the IRFA specifically; therefore, no changes were made to the rule as a result of comments on the IRFA. However, several comments were received on the economic impacts of Amendment 83 on different sectors of the industry. For a summary of the comments received, refer to the section above titled “Comments and Responses.”

Number and Description of Directly Regulated Small Entities

This final action directly regulates CVs and C/Ps that participate in the Pacific cod fisheries in the GOA. The number of small entities potentially directly regulated by the final action was estimated by calculating 2009 gross earnings for CVs, and 2009 first wholesale revenues for C/Ps, from their respective participation in all commercial fisheries in and off Alaska. Earnings estimates for 2010 are not currently available.

In 2009, 445 CVs retained Pacific cod in the GOA, including vessels that did not participate in the directed Federal fisheries, and that only had incidental catch of Pacific cod. Forty-five of these CVs were members of AFA cooperatives and, as such, are not considered small entities for the purpose of the RFA. The remaining 401 CVs are all considered small entities. In 2009, 41 C/Ps retained Pacific cod in the GOA, and seven of these vessels are

estimated to be small entities.

In addition, five processing entities will be directly regulated by this final action. A review of processor activity from 2002 through 2010 revealed that five active processing entities own seven stationary floating processors and four motherships that have participated in the GOA Pacific cod fisheries. In the absence of detailed employment data, size determinations were based on a staff review of known ownership information and knowledge of Alaska processing firms. On this basis, nine of these processing vessels are not considered small entities for the purpose of the RFA, because they appear to be owned by firms that exceed the “500 or more employees” threshold for small businesses engaged in fishing processes, when all their affiliates worldwide are included. NMFS estimates that two vessels, owned by two different processing entities, are small entities.

It is likely that additional CVs, C/P vessels, or processing entities are affiliated through partnerships, or in other ways, with other entities, and would be considered large entities for the purpose of this action, if more complete ownership information were available.

Recordkeeping and Reporting

Implementation of this action requires NMFS to modify the catch accounting system to track catch by each sector. However, vessels fishing off these allocations will have to report their catch through existing information collections, and catch will be deducted from the appropriate account by the Agency, in accordance with the revisions to the catch monitoring and accounting program.

Description of Significant Alternatives to the Final Action

The Council considered two alternatives for this action, along with a suite of

components and options that could be adopted singly or in combination. Alternative 1 is the no action alternative, in which the Western and Central GOA Pacific cod TACs would not be allocated among the various sectors, and the fisheries would continue to be managed as a limited access race for fish. Under Alternative 2, the Western and Central GOA Pacific cod TACs would be allocated among the various gear sectors and operation types. Allocations would be based on retained catch history over a series of years from 1995 through 2005, 2000 through 2006, 2002 through 2007, or 2002 through 2008. The action would have similar impacts on small and large entities. Allocations would stabilize catches of the sectors.

The recommendation under Alternative 2, the preferred alternative, to increase the jig sector allocation beyond historical catch levels will be advantageous to jig vessels, which are among the smallest entities participating in the fisheries. The jig allocation allows for potential growth in entry-level opportunities in the GOA Pacific cod fisheries. From 1995 through 2008, the jig sector harvested, on average, less than 1 percent of the Western and Central GOA Pacific cod TACs. This action could potentially increase the jig sector allocation to 6 percent of the Western and Central GOA TACs, but is not expected to do so, in the foreseeable future. Nonetheless, this provision explicitly recognizes and accommodates the special circumstances of this group of small entities.

The Council considered, but rejected, options to establish separate allocations for trawl and hook-and-line C/Ps that have historically fished the inshore TACs. Establishing distinct inshore C/P allocations would protect harvests of smaller C/Ps, if combined with a provision to limit entry to the inshore processing component. Prior to removing the option to create distinct inshore C/P allocations, the Council reviewed data that showed that during most years,

nearly all C/Ps less than 125 ft (38.1m) LOA elected to fish inshore. Therefore, if C/P allocations were to be based on vessel length (e.g., vessels less than, and vessels greater than 125 ft (38.1m) LOA), these allocations would be nearly identical to allocations based on catch by the inshore and offshore processing components. This result would not serve the objectives for this action.

The Council considered options to assign mothership processing caps as high as 10 percent of the Western and Central GOA Pacific cod TACs. Higher processing caps would benefit mothership vessels that have traditionally processed little Pacific cod in the GOA. From 2002 through 2008, less than 2 percent of the Western GOA TAC was processed annually by motherships, and no mothership processing activity occurred in the Central GOA. The Council declined to increase processing caps above recent participation levels (2002 through 2008), because such a recommendation is inconsistent with the objectives of this action and could redistribute catch, imposing greater economic burdens on other directly regulated entities with documented dependence (i.e., recent catch history) on these resources.

Based upon the best available scientific data and information, none of the alternatives to the final action accomplish the stated objectives of the MSA and other applicable statutes, while minimizing any significant adverse economic impact on small entities, beyond those achieved under the final rule. Compared with the other alternatives and options, the associated suite of options composing the preferred alternative best minimizes adverse economic impacts on small entities, while providing the most benefits to the directly regulated small entities. The action provides greater economic benefits for participants in the small boat CV fleet, including entry-level participants in the jig fishery, by providing additional harvesting opportunities and

increasing regional community based processing opportunities for CVs. The Council chose to recommend the preferred alternative because it best meets the goals of this action. This action minimizes the potential negative impacts to small entities directly, by eliminating the derby-style race for TAC among sectors, which tends to favor larger vessels that fish at higher rates and have higher hold capacity. Moreover, this alternative promotes stability in a region that has traditionally benefited from the inshore/offshore processing management.

Collection-of-Information Requirements

This rule contains collection-of-information requirements subject to review and approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been approved by OMB. The collections are listed below by OMB control number.

OMB Control No. 0206

Public reporting burden per response is estimated to average 21 minutes for Federal Fisheries Permit applications; and 21 minutes for Federal Processor Permit applications.

OMB Control No. 0213

Public reporting burden per response is estimated to average 31 minutes for a Mothership Daily Cumulative Production Logbook.

OMB Control No. 0334

Public reporting burden per response is estimated to average 20 hours for Application for a CQE to receive a Non-trawl groundfish LLP license; 1 hour for CQE Authorization Letter; and 40 hours for CQE Annual Report.

OMB Control No. 0445

Public reporting burden is estimated to average 12 minutes for Vessel Monitoring System (VMS) check-in report; and 4 hours for VMS operation (includes installation, transmission, and maintenance).

OMB Control No. 0515

Public reporting burden is estimated to average 15 minutes for the Interagency Electronic Reporting System (IERS) processor registration; 35 minutes for eLandings landing report; 10 minutes for shoreside eLanding production report; and 20 minutes for at-sea eLanding production report.

Public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to OIRA_Submission@omb.eop.gov, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Parts 679 and 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 25, 2011

Patricia A. Montanio,

Acting Deputy Assistant Administrator for Operations,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 15 CFR Chapter IX and 50 CFR Chapter VI as follows:

TITLE 15 – COMMERCE AND FOREIGN TRADE

CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,
DEPARTMENT OF COMMERCE

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER
THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 et seq.

2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR”, add an entry in alphanumeric order for “679.28(f)” to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * * *	
50 CFR	
* * * * *	
679.28(f)	-0445
* * * * *	

TITLE 50 – WILDLIFE AND FISHERIES

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL

OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

3. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq.; 1801 et seq.; 3631 et seq.; Pub. L. 108-447

4. In § 679.2,

a. Add definition of “CQE floating processor”; and

b. Revise the definitions of “Hook-and-line catcher/processor,” “Inshore component in the GOA,” “Mothership,” “Offshore Component in the GOA,” “Pot catcher/processor,” and “Stationary floating processor (SFP)” to read as follows:

§ 679.2 Definitions.

* * * * *

CQE floating processor means, for the purposes of processing Pacific cod within the marine municipal boundaries of CQE communities (see Table 21 of this part) in the Western or Central Gulf of Alaska Federal reporting areas 610, 620, or 630, a vessel not meeting the definition of a stationary floating processor in this section, that has not harvested groundfish in the Gulf of Alaska in the same calendar year, and operates on the authority of an FPP endorsed as a CQE floating processor.

* * * * *

Hook-and-line catcher/processor means a catcher/processor vessel that is named on a valid LLP license that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for any of the following areas: Bering Sea, Aleutian Islands, and/or any area in the Gulf of Alaska; and endorsed for catcher/processor fishing activity, catcher/processor Pacific cod, and hook-and-line gear.

* * * * *

Inshore component in the GOA means the following three categories of the U.S. groundfish fishery that process pollock harvested in the GOA or Pacific cod harvested in the Eastern GOA:

(1) Shoreside processors.

(2) Vessels less than 125 ft (38.1 m) LOA that hold an inshore processing endorsement on their Federal fisheries permit, and that process no more than 126 mt per week in round-weight equivalents of an aggregate amount of pollock and Eastern GOA Pacific cod.

(3) Stationary floating processors that--

(i) Hold an inshore processing endorsement on their Federal processor permit;

(ii) Process pollock harvested in a GOA directed fishery at a single GOA geographic location in Alaska state waters during a fishing year; and/or,

(iii) Process Pacific cod harvested in the Eastern GOA regulatory area at a single GOA geographic location in Alaska state waters during a fishing year.

* * * * *

Mothership means:

(1) A vessel that receives and processes groundfish from other vessels; or

(2) With respect to subpart E of this part, a processor vessel that receives and processes groundfish from other vessels and is not used for, or equipped to be used for, catching groundfish; or

(3) For the purposes of processing Pacific cod within the marine municipal boundaries of CQE communities (as defined in Table 21 to this part) in the Western or Central Gulf of Alaska, motherships include vessels with a CQE floating processor endorsement on their Federal processor permit that receive and process groundfish from other vessels.

* * * * *

Offshore component in the GOA means all vessels not included in the definition of “inshore component in the GOA” that process pollock harvested in the GOA, and/or Pacific cod harvested in the Eastern GOA.

* * * * *

Pot catcher/processor means a catcher/processor vessel that is named on a valid LLP license that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for Bering Sea, Aleutian Islands, and/or Gulf of Alaska catcher/processor fishing activity, catcher/processor Pacific cod, and pot gear.

* * * * *

Stationary floating processor (SFP) means:

(1) A vessel of the United States operating as a processor in Alaska State waters that remains anchored or otherwise remains stationary in a single geographic location while receiving or processing groundfish harvested in the GOA or BSAI; and

(2) In the Western and Central GOA Federal reporting areas 610, 620, or 630, a vessel that has not operated as a catcher/processor, CQE floating processor, or mothership in the GOA during the same fishing year; however, an SFP can operate as catcher/processor or mothership in the BSAI and an SFP in the Western and Central GOA during the same fishing year.

* * * * *

5. In § 679.4,

a. Redesignate paragraph (f)(2)(v) as (f)(2)(vi);

b. Revise paragraphs (b)(4)(ii), (b)(4)(iii), (b)(5)(iv), (f)(1), (f)(2) introductory text, (f)(2)(i), (f)(2)(iii), and newly redesignated (f)(2)(vi); and

c. Add paragraphs (f)(2)(v), (k)(10)(vii), and (k)(10)(viii) to read as follows:

§ 679.4 Permits.

* * * * *

(b) * * *

(4) * * *

(ii) Surrendered permit--(A) An FFP permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. Except as provided under paragraph (b)(4)(ii)(B) and (C) of this section, if surrendered, an FFP may be reissued in the same fishing

year in which it was surrendered. Contact NMFS/RAM by telephone, locally at 907-586-7202 (Option #2) or toll-free at 800-304-4846 (Option #2).

(B) For the BSAI, NMFS will not reissue a surrendered FFP to the owner of a vessel named on an FFP that has been issued with the following combination of endorsements: catcher/processor vessel operation type, pot and/or hook-and-line gear type, and the BSAI area, until after the expiration date of the surrendered FFP.

(C) For the GOA, NMFS will not reissue a surrendered FFP to the owner of a vessel named on an FFP that has been issued a GOA area endorsement and any combination of endorsements for catcher/processor operation type, catcher vessel operation type, trawl gear type, hook-and-line gear type, pot gear type, and/or jig gear type until after the expiration date of the surrendered FFP.

(iii) Amended permit--(A) An owner who applied for and received an FFP, must notify NMFS of any change in the permit information by submitting an FFP application found at the NMFS website at <http://alaskafisheries.noaa.gov>. The owner must submit the application as instructed on the application form. Except as provided under paragraph (b)(4)(iii)(B) and (C) of this section, upon receipt and approval of a permit amendment, the Program Administrator, RAM, will issue an amended FFP.

(B) In the BSAI, NMFS will not approve an application to amend an FFP to remove a catcher/processor vessel operation endorsement, pot gear type endorsement, hook-and-line gear type endorsement, or BSAI area endorsement from an FFP that has been issued with endorsements for catcher/processor operation type, pot or hook-and-line gear type, and the BSAI area.

(C) In the GOA, NMFS will not approve an application to amend an FFP to remove endorsements for catcher/processor operation type, catcher vessel operation type, trawl gear type, hook-and-line gear type, pot gear type, or jig gear type, and the GOA area.

(5) * * *

(iv) Area and gear information. Indicate the type of vessel operation. If catcher/processor or catcher vessel, indicate only the gear types used for groundfish fishing. If the vessel is a catcher/processor under 125 ft (38.1 m) LOA that is intended to process GOA inshore pollock or Pacific cod harvested in the inshore component of the Eastern GOA, mark the box for a GOA inshore processing endorsement.

* * * * *

(f) * * *

(1) Requirement. No shoreside processor of the United States, stationary floating processor, or CQE floating processor described at (f)(2) of this section may receive or process groundfish harvested in the GOA or BSAI, unless the owner first obtains a Federal processor permit issued under this part. A Federal processor permit is issued without charge.

(2) Contents of an FPP application. To obtain an FPP, the owner must complete an FPP application and provide the following information (see paragraphs (f)(2)(i) through (vi) of this section) for each SFP, shoreside processor plant, and CQE floating processor to be permitted:

(i) New or amended permit. Indicate whether application is for a new or amended FPP; and if an amended permit, provide the current FPP number. Indicate whether application is for a shoreside processor, an SFP, or a CQE floating processor.

* * * * *

(iii) SFP information. Indicate the vessel name; whether this is a vessel of the United States; USCG documentation number; ADF&G vessel registration number; ADF&G processor code; the vessel's LOA (ft); registered length (ft); gross tonnage; net tonnage; shaft horsepower; homeport (city and state); and whether choosing to receive a GOA inshore processing endorsement. A GOA inshore processing endorsement is required in order to process GOA inshore pollock and Eastern GOA inshore Pacific cod.

* * * * *

(v) CQE floating processor information. A vessel owner that applies to process groundfish harvested by another vessel within the marine municipal boundaries of a Western GOA or Central GOA CQE community (as defined in Table 21 to this part) under the authority of an FPP CQE floating processor endorsement must indicate: the vessel name; whether this is a vessel of the United States; USCG documentation number; ADF&G vessel registration number; ADF&G processor code; vessel's LOA (ft); registered length (ft); gross tonnage; net tonnage; shaft horsepower; homeport (city and state); and whether choosing to receive a GOA inshore processing endorsement.

(vi) Signature. The owner or agent of the owner of the shoreside processor, SFP, or CQE floating processor must sign and date the application. If the owner is a company, the agent of the owner must sign and date the application.

* * * * *

(k) * * *

(10) * * *

(vii) Additional endorsements for groundfish license holders eligible to participate in the Western and/or Central GOA Pacific cod fisheries-- (A) Requirements. A license limitation

groundfish license holder can elect to permanently add a catcher vessel endorsement for Pacific cod for the same gears and areas for which the license is currently endorsed, for the Western and/or Central GOA if the license holder—

(1) Is operating under the authority of a groundfish license endorsed for Pacific cod in Western and Central GOA, as described at paragraphs (k)(4)(vi) or (k)(10)(ii) of this section;

(2) Is endorsed to participate as a catcher/processor in the Western and/or Central GOA Pacific cod fishery; and,

(3) Made a minimum of one Pacific cod landing while operating as a catcher vessel under the authority of the catcher/processor license in Federal reporting areas 610, 620, or 630, from January 1, 2002, through December 31, 2008.

(4) Or, is the holder of a license limitation groundfish license endorsed for trawl gear Western and/or Central GOA and made a minimum of one Pacific cod landing while operating as a catcher vessel under the authority of the catcher/processor license in Federal reporting areas 610, 620, or 630, from January 1, 2002 through December 31, 2008.

(B) Additional Central GOA and/or Western GOA catcher vessel endorsement. Any holder of an LLP license that has a catcher vessel endorsement for the Western and/or Central GOA under paragraph (k)(10)(vii) of this section—

(1) Will have all directed catch of Pacific cod harvested under the authority of that groundfish license accrue against the respective GOA regulatory area catcher vessel allocations; and

(2) Will have all incidental catch of Pacific cod in the Western GOA or Central GOA Federal reporting areas 610, 620, or 630, harvested under the authority of that groundfish license accrue against the respective GOA regulatory area catcher vessel allocations.

(C) Eligible license holders not electing to add catcher vessel endorsement(s). Any holder of an LLP license that does not have a catcher vessel endorsement for the Western and/or Central GOA under (k)(10)(vii) of this section may participate in the Western GOA or Central GOA directed Pacific cod fishery as a catcher/processor or a catcher vessel; however, direct and incidental catch of Pacific cod in the Western GOA and Central GOA will accrue against the respective catcher/processor allocation.

(D) Multiple or stacked LLP licenses. For a vessel that does not meet the requirements at paragraph (k)(10)(vii) of this section but does have multiple, stacked, LLP licenses and one of those stacked licenses is endorsed as a catcher/processor eligible to harvest Pacific cod in the Western GOA or Central GOA Federal reporting areas 610, 620, or 630, all catch will accrue against the catcher/processor sector allocation for that gear type.

(E) Catch history. NMFS will assign legal landings to each groundfish license for an area based only on information contained in the official record as described in paragraph (k)(10)(viii) of this section.

(viii) Catcher/processor participation in the Western GOA and Central GOA official record. (A) The official record will contain all information used by the Regional Administrator to determine the following:

(1) The number and amount of legal landings made under the authority of that license by gear type, and operational mode;

(2) All other relevant information necessary to administer the requirements described in paragraphs (k)(10)(vii)(A)(1) through (k)(10)(vii)(A)(3) of this section.

(B) The official record is presumed to be correct. A groundfish license holder has the burden to prove otherwise.

(C) For the purposes of creating the official record, the Regional Administrator will presume if more than one person is claiming the same legal landing, that each groundfish license for which the legal landing is being claimed will be credited with the legal landing;

(D) Only legal landings as defined in § 679.2 and documented on State of Alaska Fish Tickets or NMFS weekly production reports will be used to assign legal landings to a groundfish license.

(E) The Regional Administrator will specify by letter a 30-day evidentiary period during which an applicant may provide additional information or evidence to amend or challenge the information in the official record. A person will be limited to one 30-day evidentiary period. Additional information or evidence received after the 30-day evidentiary period specified in the letter has expired will not be considered for purposes of the initial administrative determination.

(F) The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the person fails to support the person's claims and is insufficient to rebut the presumption that the official record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 30-day evidentiary period. The IAD will indicate the deficiencies with the information, or the evidence submitted in support of the information. The IAD will also indicate which claims cannot be approved based on the available information or evidence. A person who receives an IAD may appeal pursuant to § 679.43. A person who avails himself or herself of the opportunity to appeal an IAD that is accepted by the National Appeals Office will receive a non-transferable license pending the final resolution of that appeal,

notwithstanding the eligibility of that applicant for some claims based on consistent information in the official record.

* * * * *

6. In § 679.5,

a. Revise paragraphs (c)(6)(i), (c)(6)(v)(C), (e)(3)(iv)(B), (e)(6) introductory text, (e)(6)(i) introductory text, (e)(10)(ii), and (e)(10)(iii) introductory text; and

b. Add paragraph (e)(6)(i)(A)(12) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(c) * * *

(6) * * *

(i) Responsibility. Except as described in paragraph (f)(1)(v) of this section, the operator of a mothership that is required to have an FFP under § 679.4(b), or the operator of a CQE floating processor that receives or processes any groundfish from the GOA or BSAI from vessels issued an FFP under § 679.4(b) is required to use a combination of mothership DCPL and eLandings to record and report daily processor identification information, delivery information, groundfish production data, and groundfish and prohibited species discard or disposition data. The operator must enter into the DCPL any information for groundfish received from catcher vessels, groundfish received from processors for reprocessing or rehandling, and groundfish received from an associated buying station documented on a BSR.

* * * * *

(v) * * *

(C) Vessel information. Name of mothership, or CQE floating processor as displayed in official documentation, FFP or FPP number, and ADF&G processor code.

* * * * *

(e) * * *

(3) * * *

(iv) * * *

(B) Groundfish catcher/processor, mothership, or CQE floating processor. If a groundfish catcher/processor or mothership, enter the FFP number; if a CQE floating processor, enter FPP number.

* * * * *

(6) Mothership landing report. The operator of a mothership that is issued an FFP under § 679.4(b) or a CQE floating processor that receives groundfish from catcher vessels required to have an FFP under § 679.4 is required to use eLandings or other NMFS-approved software to submit a daily landing report during the fishing year to report processor identification information and the following information under paragraphs (e)(6)(i) through (iii) of this section:

(i) Information entered for each groundfish delivery to a mothership. The User for a mothership must enter the following information (see paragraphs (e)(6)(i)(A)(1) through (12) of this section) provided by the operator of a catcher vessel, operator or manager of an associated buying station, or information received from processors for reprocessing or rehandling product.

(A) * * *

(12) Receiving deliveries of groundfish in the marine municipal boundaries of a CQE community listed in Table 21 to this part.

* * * * *

(10)* * *

(ii) Mothership. The operator of a mothership that is issued an FFP under § 679.4, or the operator of a CQE floating processor that receives groundfish is required to use eLandings or other NMFS-approved software to submit a production report to record and report daily processor identification information, groundfish production data, and groundfish and prohibited species discard or disposition data.

(iii) Contents. eLandings autofills the following fields when creating a production report for a catcher/processor or mothership: FFP or FPP number, company name, ADF&G processor code, User name, email address, and telephone number. The User must review the autofilled cells to ensure that they are accurate for the current report. In addition, the User for the catcher/processor or mothership must enter the information in paragraphs (e)(10)(iii)(A) through (N) of this section.

* * * * *

7. In § 679.7,

- a. Revise paragraphs (a)(7)(vi), (viii), and (ix), (a)(15), and (k)(1)(iv); and
- b. Add paragraphs (b)(4), (b)(5), (b)(6), (b)(7), and (k)(2)(ii) to read as follows:

§ 679.7 Prohibitions.

(a) * * *

(7) * * *

(vi) Except as provided in paragraph (k)(3)(iv) of this section, use a stationary floating processor with a GOA inshore processing endorsement to process pollock harvested in the GOA or Pacific cod harvested in the Eastern GOA in a directed fishery for those species in more than one single geographic location in the GOA during a fishing year.

* * * * *

(viii) Use a vessel operating under the authority of a groundfish license with a Pacific cod endorsement to directed fish for Pacific cod in the Eastern GOA apportioned to the inshore component of the GOA as specified under § 679.20(a)(6) if that vessel has directed fished for Pacific cod in the Eastern GOA apportioned to the offshore component of the Eastern GOA during that calendar year.

(ix) Use a vessel operating under the authority of a groundfish license with a Pacific cod endorsement to directed fish for Pacific cod in the Eastern GOA apportioned to the offshore component of the Eastern GOA as specified under § 679.20(a)(6) if that vessel has directed fished for Pacific cod in the Eastern GOA apportioned to the inshore component of the GOA during that calendar year.

* * * * *

(15) Federal processor permit--(i) Receive, purchase or arrange for purchase, discard, or process groundfish harvested in the GOA or BSAI by a shoreside processor or SFP and in the Western and Central GOA regulatory areas, including Federal reporting areas 610, 620, and 630, a CQE floating processor, that does not have on site a valid Federal processor permit issued pursuant to § 679.4(f).

(ii) Receive, purchase or arrange for purchase, discard, or process groundfish harvested in the GOA by a CQE floating processor that does not have on site a valid Federal processor permit issued pursuant to § 679.4(f).

* * * * *

(b) * * *

(4) Catcher vessel restrictions--(i) Deliver Pacific cod harvested in the Western GOA or Central GOA regulatory area including Federal reporting areas 610, 620, or 630, to a vessel for processing in a GOA regulatory area other than the area in which the harvest occurred.

(ii) Deliver Pacific cod harvested in the Western GOA or Central GOA regulatory area, including Federal reporting areas 610, 620, or 630, to another vessel for processing unless the processing vessel carries an operable NMFS-approved Vessel Monitoring System that complies with the requirements in § 679.28(f).

(iii) Deliver Pacific cod harvested in the Western GOA or adjacent waters parallel directed fishery to a vessel for processing in excess of the processing limits established at § 679.20(a)(12)(iv) or (v), unless the processing vessel meets the definition of a stationary floating processor at § 679.2.

(iv) Deliver Pacific cod harvested in the Central GOA or adjacent waters parallel directed fishery in excess of the processing limits established at § 679.20(a)(12)(v), unless the processing vessel meets the definition of a stationary floating processor at § 679.2.

(v) Deliver Pacific cod harvested in the Central GOA or adjacent waters parallel directed fishery to a vessel for processing, unless that vessel is endorsed as a CQE floating processor or stationary floating processor.

(vi) Eligible catcher/processor LLP license holders electing to add a catcher vessel endorsement for the Western or Central GOA under § 679.4 (k)(10)(vii)(B) and (C) of this part are prohibited from catching and processing Pacific cod onboard a vessel under the authority of that groundfish license in the directed Pacific cod fishery in Federal reporting areas 610, 620, or 630.

(5) Stationary floating processor restrictions--(i) Except as provided in paragraph (k)(3)(iv) of this section, to use a stationary floating processor to process Pacific cod at more than one single geographic location in the GOA during a fishing year if the Pacific cod was harvested in a Western or Central GOA directed fishery within Federal reporting areas 610, 620, or 630.

(ii) Operate as a stationary floating processor in the GOA and as a catcher/processor in the GOA during the same calendar year.

(iii) Operate as a stationary floating processor in the GOA and as a CQE floating processor or mothership in the GOA during the same calendar year.

(6) Parallel fisheries. Use a vessel designated or required to be designated on an FFP to catch and process Pacific cod from waters adjacent to the GOA when Pacific cod caught by that vessel is deducted from the Federal TAC specified under § 679.20(a)(12)(i)(A)(2) through (6) of this part for the Western GOA and § 679.20(a)(12)(i)(B)(2) through (7) of this part for the Central GOA unless:

(i) That non-trawl vessel is designated on both:

(A) An LLP license issued under § 679.4(k) of this part, unless that vessel is using jig gear and exempt from the LLP license requirement under § 679.4(k)(2)(iii) of this part. Each vessel required to have an LLP license must be designated with the following endorsements:

(1) The GOA area designation adjacent to the parallel waters fishery where the harvest occurred; and

(2) A Pacific cod endorsement.

(B) An FFP issued under § 679.4(b) of this part with the following endorsements:

(1) The GOA area designation;

- (2) An operational type designation;
- (3) A gear type endorsement; and
- (4) A Pacific cod gear type endorsement.

(ii) Or, that trawl vessel is designated on both:

(A) An LLP license issued under § 679.4(k) of this part endorsed for trawl gear with the GOA area designation adjacent to the parallel waters fishery where the harvest occurred, and

(B) An FFP issued under § 679.4(b) of this part with the following endorsements:

- (1) The GOA area designation;
- (2) An operational type designation;
- (3) A trawl gear type endorsement; and
- (4) A Pacific cod gear type endorsement.

(7) Parallel fishery closures. Use a vessel designated or required to be designated on an FFP to catch and retain Pacific cod from waters adjacent to the GOA when Pacific cod caught by that vessel is deducted from the Federal TAC specified under § 679.20(a)(12)(i)(A)(2) through (6) of this part for the Western GOA and § 679.20(a)(12)(i)(B)(2) through (7) of this part for the Central GOA if directed fishing for Pacific cod is not open.

* * * * *

(k) * * *

(1) * * *

(iv) Processing GOA groundfish--(A) Use a listed AFA catcher/processor to process any pollock harvested in a directed pollock fishery in the GOA and any groundfish harvested in Statistical Area 630 of the GOA.

(B) Use a listed AFA catcher/processor as a stationary floating processor for Pacific cod in the GOA and a catcher/processor in the GOA during the same year.

* * * * *

(2) * * *

(ii) Processing GOA groundfish. Use a listed AFA mothership as a stationary floating processor for Pacific cod in the GOA and a mothership in the GOA during the same year.

* * * * *

8. In § 679.20,

a. Revise paragraphs (a)(6)(ii), (a)(12), (b)(2)(ii), (c)(4)(ii); and

b. Add paragraphs (c)(4)(iii) and (c)(7) to read as follows:

§ 679.20 General limitations.

(a) * * *

(6) * * *

(ii) Eastern GOA Regulatory Area Pacific cod. The apportionment of Pacific cod in the Eastern GOA Regulatory Area will be allocated 90 percent to vessels harvesting Pacific cod for processing by the inshore component and 10 percent to vessels harvesting Pacific cod for processing by the offshore component.

* * * * *

(12) GOA Pacific cod TAC —(i) Seasonal allowances by sector. The Western and Central GOA Pacific cod TACs will be seasonally apportioned to each sector such that: 60 percent of the TAC is apportioned to the A season and 40 percent of the TAC is apportioned to the B season, as specified in § 679.23(d)(3).

(A) Western GOA Regulatory Area-- Jig sector. A portion of the annual Pacific cod TAC will be allocated to vessels with an FFP that use jig gear, as determined in the annual harvest specification under paragraph (c)(7) of this section, before TAC is apportioned among other non-jig sectors. Other Pacific cod sector allowances are apportioned after allocation to the jig sector based on gear type and operation type as follows:

Sector	Gear Type	Operation Type	Seasonal Allowances	
			A season	B season
(1)	Hook-and-Line	Catcher vessel	0.70%	0.70%
(2)	Hook-and-Line	Catcher/Processor	10.90%	8.90%
(3)	Trawl	Catcher vessel	27.70%	10.70%
(4)	Trawl	Catcher/Processor	0.90%	1.50%
(5)	Pot	Catcher Vessel and Catcher/Processor	19.80%	18.20%
(6)	Nontrawl	Any	0.00%	0.00%

(B) Central GOA Regulatory Area-- Jig sector. A portion of the annual Pacific cod TAC will be allocated to vessels with an FFP that use jig gear, as determined in the annual harvest specification under paragraph (c)(7) of this section, before TAC is apportioned among other non-jig sectors. Other Pacific cod sector allowances are apportioned after allocation to the jig sector based on gear type, operation type, and length overall as follows:

Sector	Gear Type	Operation Type	Length Overall in Feet	Seasonal Allowances	
				A season	B season
(1)	Hook-and-Line	Catcher vessel	<50	9.31552%	5.28678%
(2)	Hook-and-Line	Catcher vessel	≥50	5.60935%	1.09726%
(3)	Hook-and-Line	Catcher/Processor	Any	4.10684%	0.99751%
(4)	Trawl	Catcher vessel	Any	21.13523%	20.44888%
(5)	Trawl	Catcher/Processor	Any	2.00334%	2.19451%
(6)	Pot	Catcher Vessel and Catcher/Processor	Any	17.82972%	9.97506%
(7)	Nontrawl	Any	Any	0.00%	0.00%

(ii) Reapportionment of TAC--(A) The Regional Administrator may apply any underage or overage of Pacific cod harvest by each sector from one season to the subsequent season. In adding or subtracting any underages or overages to the subsequent season, the Regional Administrator shall consider the incidental catch and any catch in the directed fishery by each sector.

(B) If, during a fishing year, the Regional Administrator determines that a sector will be unable to harvest the entire amount of Pacific cod allocated to that sector under (a)(12)(i)(A) or (B) of this section, the Regional Administrator will reallocate the projected unused amount of Pacific cod to other sectors through notification in the Federal Register. Any reallocation decision by the Regional Administrator would consider a reallocation of the projected unused allocation to the CV sectors first, then to the combined CV and C/P pot sector, and then to all other C/P sectors, taking into account the capability of a sector, as determined by the NMFS Alaska Regional Administrator, to harvest the remaining Pacific cod TAC.

(iii) Catch accounting--(A) Incidental Pacific cod harvested between the closure of the A season and opening of the B season shall be deducted from the B season TAC apportionment for that sector.

(B) Each license holder that is assigned an LLP license with a catcher/processor operation type endorsement that is not assigned a catcher vessel operation type endorsement under the provisions at § 679.4(k)(10)(vii)(A) and (B) shall have all incidental and direct catch of Pacific cod deducted from the catcher/processor sector allocation and gear type designation corresponding to the gear used by that vessel.

(C) Holders of catcher/processor licenses assigned a Western GOA CV endorsement, under the provisions at § 679.4(k)(10)(vii)(A) and (B), shall have all incidental and direct catch

of Pacific cod in the Western GOA deducted from the CV sector's allocation and gear type designation corresponding to the gear used by that vessel in the Western GOA.

(D) Holders of C/P licenses eligible to, and electing to receive a Central CV endorsement, under the provisions at § 679.4(k)(10)(vii)(A) and (B), shall have all incidental and direct catch of Pacific cod in the Central GOA deducted from the CV sector's allocation and gear type designation corresponding to the gear used by that vessel in the Central GOA.

(E) NMFS shall determine the length overall of a vessel operating in the Central GOA based on the length overall designated on the FFP assigned to that vessel.

(iv) Processing caps for FFP licensed vessels. In the Western GOA, no more than 2 percent of the total Pacific cod TAC allocated to the Western GOA regulatory area can be delivered for processing to vessels operating under the authority of an FFP.

(v) Processing caps for FFP licensed vessels operating as CQE floating processors. Harvesting vessels may deliver Pacific cod harvested in the directed Pacific cod TAC fishery, if the processing vessel receiving the Pacific cod---

(A) Does not meet the definition of a stationary floating processor at § 679.2;

(B) Is operating under the authority of an FFP license endorsed as a CQE floating processor;

(C) Is located within the marine municipal boundaries of a CQE community in the State waters adjacent to the Central or Western GOA as described in Table 21 to this part; and

(D) The total amount of Pacific cod received or processed by all CQE floating processors does not exceed---

(1) 3 percent of the total Western GOA Pacific cod TAC; or

(2) 3 percent of the total Central GOA Pacific cod TAC.

* * * * *

(b) * * *

(2) * * *

(ii) Pacific cod reapportionment. Any amounts of the GOA reserve that are reapportioned to the GOA Pacific cod fishery as provided by paragraph (b) of this section must be apportioned in the same proportion specified in paragraphs (a)(6)(ii) and (a)(12)(i) of this section.

* * * * *

(c) * * *

(4) * * *

(ii) GOA pollock. The annual harvest specifications will specify the allocation of GOA pollock for processing by the inshore component in the GOA and the offshore component in the GOA, and any seasonal allowances thereof, as authorized under paragraphs (a)(5) and (a)(6) of this section.

(iii) Eastern GOA Pacific cod. The annual harvest specifications will specify the allocation of Eastern GOA Pacific cod for processing by the inshore component and the offshore component, and any seasonal allowances thereof, as authorized under paragraph (a)(6) of this section.

* * * * *

(7) Western and Central GOA Pacific cod allocations. The proposed and final harvest specifications will specify the allocation of GOA Pacific cod among gear types and any seasonal allowances thereof, as authorized under paragraph (a)(12) of this section.

* * * * *

9. In § 679.21,

a. Remove paragraph (d)(4)(iii)(B);

b. Redesignate paragraph (d)(4)(iii)(C) as (d)(4)(iii)(B); and

c. Revise newly redesignated paragraph (d)(4)(iii)(B), and paragraphs (d)(5)(iv) and (d)(7)(ii), to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(d) * * *

(4) * * *

(iii) * * *

(B) Other hook-and-line fishery. Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of groundfish and is not a demersal shelf rockfish fishery defined under paragraph (d)(4)(iii)(A) of this section, as follows---

(1) Catcher vessels using hook-and-line gear will be apportioned part of the GOA halibut PSC limit in proportion to the total Western and Central GOA Pacific cod allocations, where X is equal to annual TAC, as follows---

$$\text{Total HAL PSC limit mt} \times \frac{(1.4\%X_{WGOA}) + 21.3\%X_{CGOA}}{(19.8\% + 1.4\%X_{WGOA}) + (5.1\% + 21.3\%X_{CGOA})}$$

(2) Catcher/processors using hook-and-line gear will be apportioned part of the GOA halibut PSC limit in proportion to the total Western and Central GOA Pacific cod allocations, where X is equal to annual TAC, as follows---

$$\text{Total HAL PSC limit mt} \times \frac{(19.8\%X_{WGOA}) + 5.1\%X_{CGOA}}{(19.8\% + 1.4\%X_{WGOA}) + (5.1\% + 21.3\%X_{CGOA})}$$

(3) No later than November 1, any halibut PSC limit allocated under paragraph (d)(4)(iii)(B) of this section not projected by the Regional Administrator to be used by one of the hook-and-line sectors during the remainder of the fishing year will be made available to the other sector.

(5) * * *

(iv) Seasonal apportionment exceeded. If a seasonal apportionment of a halibut PSC limit specified for trawl, hook-and-line, pot gear, and/or operational type is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from the respective apportionment for the next season during a current fishing year.

* * * * *

(7) * * *

(ii) Hook-and-line fisheries. If, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the three hook-and-line gear and operational type fishery categories listed under paragraph (d)(4)(iii) of this section will catch the halibut bycatch allowance, or apportionments thereof, specified for that fishery category under paragraph (d)(1) of this section, NMFS will publish notification in the Federal Register closing the entire GOA or the applicable regulatory area, district, or operation type to directed fishing with hook-and-line gear for each species and/or species group that comprises that fishing category.

* * * * *

10. In § 679.23,

- a. Remove and reserve paragraph (d)(4);
- b. Revise paragraph (d)(3)(i) introductory text; and

c. Add paragraph (d)(3)(iii) to read as follows:

§ 679.23 Seasons.

* * * * *

(d) * * *

(3) * * *

(i) Hook-and-line or pot gear. Subject to other provisions of this part, directed fishing for Pacific cod with hook-and-line or pot gear in the Western and Central GOA Regulatory Areas is authorized only during the following two seasons:

* * * * *

(iii) Jig gear. Subject to other provisions of this part, directed fishing for Pacific cod with jig gear in the Western and Central GOA Regulatory Areas is authorized only during the following two seasons:

(A) A season. From 0001 hours, A.l.t., January 1 through 1200 hours, A.l.t., June 10 or when the jig A season allocation is reached, whichever occurs first;

(B) B season. From 1200 hours, A.l.t., June 10 through 2400 hours, A.l.t., December 31 or when the jig B season allocation is reached, whichever occurs first.

(4) [Reserved]

* * * * *

11. In § 679.28,

a. Revise paragraphs (f)(6)(iii) and (f)(6)(iv); and

b. Add paragraph (f)(6)(v) to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(f) * * *

(6) * * *

(iii) You operate a vessel required to be Federally permitted with non-pelagic trawl or dredge gear onboard in reporting areas located in the GOA or operate a federally permitted vessel with non-pelagic trawl or dredge gear onboard in adjacent State waters;

(iv) When that vessel is required to use functioning VMS equipment in the Rockfish Program as described in § 679.7(n)(3); or

(v) You operate a vessel in federal reporting areas 610, 620, or 630, and receive and process groundfish from other vessels.

* * * * *

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

12. The authority citation for 50 CFR part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109-241; Pub. L. 109-479

13. In § 680.22, revise paragraph (d) introductory text to read as follows:

§ 680.22 Sideboard protections for GOA groundfish fisheries.

* * * * *

(d) Determination of GOA groundfish sideboard ratios. Except for fixed gear sablefish, sideboard ratios for each GOA groundfish species, species group, season, operation type, gear type, and area, for which annual specifications are made, are established according to the following formulas:

* * * * *

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